

Trafficking Victim Benefits Under the Affordable Care Act (ACA)

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The Patient Protection and Affordable Care Act (popularly known as the “ACA”) of 2010 sought to increase health care coverage in the United States by requiring that eligible individuals purchase qualified health insurance plans and the establishment of online health insurance exchanges, which contain multiple private health insurance plans.³ Trafficking victims who are granted continued presence and trafficking victims who file for and receive T-visas have greater access to a full range of subsidized health care benefits than any other group of immigrant crime victims.⁴ In addition to the federal laws, states have the power to regulate immigrants’ access to health care and to public benefits.⁵

The ACA created two categories of immigrants: those are who are “lawfully present” and those who are not.⁶

T-Visa seekers become lawfully present when:

- They are granted continued presence and receive HHS certification from the Office of Refugee Resettlement (ORR)⁷
- Their T-Visa petition is approved, or
- They receive “bona fide” letter in their T visa case from the Department of Homeland Security (DHS)

Lawfully present T visa victims are subject to the individual mandate (unless they qualify for a low income exception) and are eligible to purchase insurance on the health care exchanges. *Low income trafficking victims with HHS certification are eligible to receive health care through Medicaid.*

A trafficking victim may be eligible for continued presence when:

1. The identified individual must be a victim of human trafficking
- AND**
2. Is willing to be a potential witness in the investigation or prosecution of the trafficker. The federal law enforcement official will make the initial determination if the individual meets the federal definition of a victim of a severe form of trafficking in persons.
 3. In some cases, a victim can qualify for continued presence even when the s/he has not cooperated with law enforcement

How to apply for and obtain Office of Refugee and Resettlement benefits eligibility based on Continued Presence⁸:

1. Request that federal law enforcement officials (Immigration and Customs Enforcement (ICE), FBI, U.S. Attorneys) submit a Continued Presence application to the ICE Law Enforcement Parole Branch.
 - a. Only federal officials can certify.

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³ The Patient Protection and Affordable Care Act, Pub. L. 111-148 (Mar. 23, 2010).

⁴ For further information on the various benefits available to T-Visa immigrants and trafficking victims with continued presence, please see JORDAN TACHER AND LESLYE E. ORLOFF, T-VISA VICTIM BENEFITS ELIGIBILITY PROCESS (Apr. 12, 2013), available at: <http://niwaplibrary.wcl.american.edu/public-benefits/memos-and-tools-for-advocates/Trafficking-Victims-Benefits-Eligibility-Process.pdf/view>.

⁵ For further information, please see NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, MEDICAL ASSISTANCE PROGRAMS FOR IMMIGRANTS AND IMMIGRANT CRIME VICTIMS (June 13, 2013), available at: <http://niwaplibrary.wcl.american.edu/public-benefits/state-benefits/Medical-Assistance-State-Chart.pdf>.

⁶ Those who are not lawfully present include undocumented immigrants and immigrants who have been granted relief under Deferred Action for Childhood Arrivals (DACA.) These immigrants are barred from using the health care exchanges but are also exempted from the individual mandate. They are still eligible for emergency care.

⁷ See State Letter #01-13: The Trafficking Victims Protection Act of 2000, U.S. DEP’T OF HEALTH AND HUMAN SERVS. OFFICE OF REFUGEE RESETTLEMENT (May 3, 2001), available at <http://www.acf.hhs.gov/programs/orr/resource/state-letter-01-13> (last visited Mar. 22, 2013).

⁸ For more information and sample documents, see A Guide for Legal Advocates Providing Services to Victims of Human Trafficking, CATHOLIC LEGAL IMMIGRATION NETWORK, LEGAL AID FOUND. OF LOS ANGELES, U.S. CONFERENCE OF CATHOLIC BISHOPS/MIGRATION & REFUGEE SERVS. (Nov. 2004), available at http://www.uscriefugees.org/2010Website/5_Resources/5_4_For_Lawyers/5_4_3_Human_Trafficking_Resources/5_4_3_1_Human_Trafficking_Manuals/AGuideforLegalAdvocates.pdf (last visited MAR. 22, 2013).

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- b. If the trafficking case is being investigated or prosecuted by state or local officials, they must request that federal law enforcement officials file the continued presence request with ICE on behalf of the trafficking victim.
2. Once the federal law enforcement official receives the information for the application from the trafficking victim (in federal cases) or state law enforcement (in state cases), the federal official then files the Continued Presence application with ICE Law Enforcement Parole Branch.
3. When the ICE Law Enforcement Parole Branch approves a Continued Presence application for a trafficking victim, notification is sent to ORR and the Violence Against Women Act (VAWA) Unit of the Department of Homeland Security (DHS).
4. Once ICE grants Continued Presence--
 - a. ORR issues a letter authorizing the victim to receive federal and state benefits⁹
 - b. VAWA Unit produces a Form I-94 "Arrival-Departure Record" and employment authorization and forwards these to the federal submitting official who conveys these documents to the victim¹⁰
5. Continued presence authorization lasts for one year.
6. The continued presence can be renewed if the federal investigation or prosecution is ongoing and the victim is cooperating with reasonable requests from law enforcement.
7. Trafficking victims with continued presence, who qualify, may apply for a T visa, which provides a four year visa and a path to lawful permanent residency.

A person may be eligible for a T-Visa when they:¹¹

- Are or have been the victim of a severe form of human trafficking;
- Are physically in the United States, American Samoa, or at a port-of-entry to the United States or American Samoa on account of human trafficking;
- Would suffer extreme hardship involving unusual and severe harm if removed from the United States; and
- Satisfy one of the following three conditions:
 - The victim has cooperated and is willing to cooperate with reasonable requests for assistance by federal, state, or local law enforcement in investigating or prosecuting crimes related to human trafficking; or
 - The victim is excused by the Attorney General from failing to cooperate with reasonable requests for assistance by federal, state, or local law enforcement in investigating or prosecuting crimes related to human trafficking because of physical or psychological trauma; or
 - The victim is under 18 years of age.

Application process for T-Visas:¹²

- File T visa application with the VAWA Unit of DHS. It is strongly encouraged, but not required, that the T visa application include a law enforcement certification.
- T Visa applicants can also apply for benefits for certain family members who are either in the U.S. or abroad (spouse, children, parents, unmarried siblings under the age of 18). Family members must apply for status using a supplemental application.
- Once the application is received, the applicant will be notified about going to the United States Citizenship and Immigration Services' (USCIS) Application Support Center for fingerprinting.
- The Vermont Service Center will determine whether the applicant is to receive *bona fide* because the following conditions are met. The application:
 - Is complete and properly filed,
 - Contains law enforcement agency endorsement or credible secondary evidence,
 - Includes completed fingerprint and background checks,
 - Presents *prima facie* evidence to show eligibility for a T visa, and
 - Contains no indication of fraud.
- USCIS will then use various means, such as parole or deferred action, to prevent the removal of individuals who have filed *bona fide* applications until the VAWA Unit issues a final decision on the T visa application.

⁹ Adult trafficking victims receive an ORR certification letter and child trafficking victims receive an eligibility letter.

¹⁰ Only the federal law enforcement official or assigned agency victim assistance coordinator can provide the victim or their representative updates on the status of pending Continued Presence applications.

¹¹ JORDAN TACHER AND LESLYE E. ORLOFF, T-VISA VICTIM BENEFITS ELIGIBILITY PROCESS (Apr. 12, 2013), available at: <http://niwaplibrary.wcl.american.edu/public-benefits/memos-and-tools-for-advocates/Trafficking-Victims-Benefits-Eligibility-Process.pdf/view>.

¹² *Id.*

- The VAWA Unit will send a *bona fide* determination letter to the applicant and to the Office of Refugee Resettlement (ORR).
- Based on this bona fide determination, ORR will issue a certification letter to an adult victim and an eligibility letter to a child victim.
- Individuals granted deferred action or parole, whether through continued presence or as a result of a *bona fide* determination, may immediately be granted employment authorization without having to wait for the ORR certification or eligibility letter.
- If the T visa is approved, the visa is valid for four years.
- T visa recipient may apply for lawful permanent residency after one of the following occurs:
 - The victim must be continually physically present in the U.S. with a T visa for three years; or
 - The victim received certification that the investigation is complete

How to receive benefits after receiving Continued Presence status or a T visa:¹³

1. Once ORR has granted certification and eligibility letters, benefit granting agencies must accept these in lieu of immigration documentation.
2. Victims are not required to prove immigration status.
3. Before victims can receive benefits, benefit representatives must contact ORR at Trafficking@acf.hhs.gov or 1.866.401.5510 to verify the validity of ORR-issued letters and also to inform ORR of the benefits for which a victim has applied.
4. After the benefit agency notifies ORR, the agency cannot deny the benefits for which the victim applied even if ORR has not responded.
5. If a Social Security Number is required for eligibility of benefits (Medicaid, TANF, Food Stamps), the agency must grant the trafficking victim benefits while working with ORR to obtain a non-work social security number.

T-Visa holders are considered lawfully present for the purposes of the ACA when they receive a “bona fide” letter from USCIS. At this point, they are subject to the individual mandate unless they meet a low-income exception.

Lawfully present immigrants are eligible for:

- Private qualified health insurance plans available on the state and federal exchanges;
- Tax credits and cost-sharing reductions;
- Temporary high risk pools and basic health plans;
- Victims of severe forms of human trafficking with HHS certification, if low income, are eligible to receive Medicaid and the full range of federal and state public benefits for 7 years.
 - T visa applicants receiving bona fide determinations and T visa holders are additionally eligible for public benefits after 7 years as “qualified” immigrants¹⁴
 - Trafficking victims with continued presence, T visas bona fide determinations and T visas have access to federal health care subsidies and are less affected by state restrictions than other immigrants.¹⁵

Always available to everyone regardless of status:

- HHS funded unrestricted health care (public health clinics);
- Emergency Medicaid;
- Victims of Crime Act (VOCA) for health care related to crime victimization, and
- Services that protect life and safety (shelter, transitional housing, soup kitchens, victim services, police assistance, justice system access).

¹³ See *State Letter #01-13: The Trafficking Victims Protection Act of 2000*, U.S. DEP’T OF HEALTH AND HUMAN SERVS. OFFICE OF REFUGEE RESETTLEMENT (May 3, 2001), available at <http://www.acf.hhs.gov/programs/orr/resource/state-letter-01-13> (last visited Mar. 22, 2013).

¹⁴ *Id.*

¹⁵ For state by state comparisons of health care benefits available to immigrants, please see <http://niwaplibrary.wcl.american.edu/public-benefits/health-care>. For further information, please see CARLY ERICKSON AND LESLYE E. ORLOFF, FEDERAL, PARTNERSHIP, AND STATE EXCHANGES THAT PROVIDE STATE AND STATE-OPTION FUNDED MEDICAID OR MEDICAID-LIKE SERVICES (June 16, 2014), available at <http://niwaplibrary.wcl.american.edu/public-benefits/health-care/Affordable%20Care%20Act%20and%20Exchanges.pdf/view>; For a state by state breakdown of the options available to pregnant women and children, please see LEGAL MOMENTUM AND MORGAN LEWIS, LLP, PRE-NATAL CARE FOR QUALIFIED AND NON-QUALIFIED IMMIGRANTS (2010), available at <http://niwaplibrary.wcl.american.edu/public-benefits/health-care/4-PreNatal%20Care%20for%20Qualified%20and%20Non-Qualified%20Aliens%20-all%20states.pdf>