

U-Visa 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 Similar to other public benefits, there is no one-size-fits-all rule as to when immigrant victims qualify for subsidies and for what health care benefits may be covered by subsidies.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 U visa victims are considered lawfully presents at two different points in the U visa application process. U visa victims become lawfully present:

- Initially, when their U visa application is approved, victims are granted conditional approval and their case is placed on a wait-list to wait their turn in line for a U visa. During this time the victim is granted “deferred action status” and work authorization. Immigrants with “deferred action status” are lawfully present.
- Once a U visa becomes available and the victim is awarded a U visa, U visa holders are also included in the category of “lawfully present.”

Lawfully present U visa victims are subject to the individual mandate, unless they meet the low-income exception, and are eligible to purchase insurance on the exchanges. In the vast majority of states lawfully present U visa victims do not receive health care subsidies and when subsidies are offered they are generally only for *prenatal and child health care*.

A person may be eligible for a U-Visa when they:⁷

- Have suffered substantial physical or mental harm as a result of being the victim of a qualifying criminal activity/activities;
 - Qualifying criminal activity includes: abduction, abusive sexual contact, blackmail, domestic violence, extortion, false imprisonment, female genital mutilation, felonious assault, fraud in foreign labor contracting, hostage, incest, involuntary servitude, kidnapping, manslaughter, murder, obstruction of justice, perjury, prostitution, rape, sexual assault or exploitation, slave trade, stalking, torture, trafficking, witness tampering, and other qualifying criminal activity
- Possess information regarding the criminal activity/activities suffered; and
- Have been helpful, is helpful, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the qualifying criminal activity/activities.

In order to apply for a U visa the immigrant crime victim must submit as a mandatory part of the application a certification form signed by a government official who qualifies under the Department of Homeland Security (DHS) regulations to sign certifications (e.g. police, prosecutor, judge, adult or child protective services, EEOC, Labor, etc.)

Application process for U-Visas:⁸

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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, 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 INA §101(a)(15)(U)(i)(I) *et seq.*

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- The immigrant crime victim obtains a U-Visa certification.
- The immigrant crime victim files the U-Visa application with attachments including the U-Visa certification form at the Violence Against Women Act (VAWA) Unit of the U.S. Citizenship and Immigration Services at DHS.
- If the victim is applying for a family member (e.g. a spouse, child, or parent depending on the age of the applicant), a supplemental application must be filed for each family member who is applying for a U-Visa.
- Applicants seeking work authorization for family members should include work authorization requests with the original application.
- If the U-Visa is approved, the applicant will first receive a conditional (wait-list) approval with deferred action status and work authorization.
- Work authorization is granted for the applicant and all family members who previously filed work authorization applications
- Once the U visa is received, the visa lasts four years, which can be extended if a law enforcement agency confirms that the victim's presence in the U.S. is required to assist in the investigation or prosecution of the criminal activity.
- U-Visa recipients can apply for lawful permanent residency after three years by proving –
 - That the victim either continued to provide assistance or did not unreasonably refuse to provide assistance in the investigation or prosecution of the criminal activity; and
 - The victim's continued presence in the U.S. is justified on humanitarian grounds, to ensure family unity, or is in the public interest.

U-Visa applicants with deferred action status and U visa holders are considered lawfully present for the purposes of the ACA when they have been granted conditional approval by USCIS. At that point, they are subject to the individual mandate unless they meet a low-income exception.

U-Visa applicants become lawfully present when:

- Their U-Visa application is approved; or
- They are granted conditional approval by USCIS;
- Upon filing, U visa applicants can be considered PRUCOL.⁹ In a limited number of states PRUCOL immigrant crime victims may qualify for state funded health care or other benefits.

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;
- Low income, U visa holders who receive lawful permanent residency must wait 5 years before they become eligible for Medicaid, and there can be state specific restrictions¹⁰
- Only a limited number of states offer health care subsidies to lawfully present U visa victims and family members included in the U visa application¹¹
 - *Subsidies are most often available for pregnant women and children depending on the state.*¹²

Health Care 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).

⁸ JORDAN TACHER AND LESLYE E. ORLOFF, U-VISA VICTIM BENEFITS ELIGIBILITY PROCESS (Apr. 17, 2013), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access/U-Benefits-Eligibility-Process.pdf>.

⁹ PRUCOL (person residing under color of law) is a term of art used to determine whether an immigrant is eligible to receive certain public benefits without being considered fully qualified. It is not a status recognized by USCIS.

¹⁰ For state by state comparisons of health care benefits available to immigrants, please see <http://niwaplibrary.wcl.american.edu/public-benefits/health-care>.

¹¹ 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>.

¹² 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>.