

Access to Health Care for Immigrant Victims of Sexual Assault¹²

By Leslye Orloff, Amanda Baran, and Phoebe Mounts

Immigrant victims of sexual assault face a myriad of health issues. Immigrant women are frequently unaware of, or do not realize the full extent of, their legal access and rights to health care. Eligibility rules are confusing and many front-line health workers and advocates for immigrant women are unaware of all of services available to immigrant victims. Many advocates, attorneys, and healthcare workers have not had the chance to be trained on the full range about the health options available to victims of domestic violence, sexual assault, and trafficking. Federal law governs access to some forms of physical and mental health services, while state laws can guarantee other types of access to these life-saving services.

¹ “This Manual is supported by Grant No. 2005-WT-AX-K005 and 2011-TA-AX-K002 awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.”

² In this Manual, the term “victim” has been chosen over the term “survivor” because it is the term used in the criminal justice system and in most civil settings that provide aid and assistance to those who suffer from domestic violence and sexual assault. Because this Manual is a guide for attorneys and advocates who are negotiating in these systems with their clients, using the term “victim” allows for easier and consistent language during justice system interactions. Likewise, The Violence Against Women Act’s (VAWA) protections and help for victims, including the immigration protections are open to all victims without regard to the victim’s gender identity. Although men, women, and people who do not identify as either men or women can all be victims of domestic violence and sexual assault, in the overwhelming majority of cases the perpetrator identifies as a man and the victim identifies as a woman. Therefore we use “he” in this Manual to refer to the perpetrator and “she” is used to refer to the victim. Lastly, VAWA 2013 expanded the definition of underserved populations to include sexual orientation and gender identity and added non-discrimination protections that bar discrimination based on sex, sexual orientation and gender identity. The definition of gender identity used by VAWA is the same definition as applies for federal hate crimes – “actual or perceived gender-related characteristics.” On June 26, 2013, the U.S. Supreme Court struck down a provision of the Defense of Marriage Act (DOMA) (*United States v. Windsor*, 12-307 WL 3196928). The impact of this decision is that, as a matter of federal law, all marriages performed in the United States will be valid without regard to whether the marriage is between a man and a woman, two men, or two women. Following the Supreme Court decision, federal government agencies, including the U.S. Department of Homeland Security (DHS), have begun the implementation of this ruling as it applies to each federal agency. DHS has begun granting immigration visa petitions filed by same-sex married couples in the same manner as ones filed by heterosexual married couples (<http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act>). As a result of these laws VAWA self-petitioning is now available to same-sex married couples (this includes protections for all spouses without regard to their gender, gender identity - including transgender individuals – or sexual orientation) including particularly:

- victims of battering or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident spouse against a same sex partner in the marriage is eligible to file a VAWA self-petition; and
- an immigrant child who is a victim of child abuse perpetrated by their U.S. citizen or lawful permanent resident step-parent is also eligible when the child’s immigrant parent is married to a U.S. citizen or lawful permanent resident spouse without regard to the spouse’s gender.

Access to Health Care for Immigrant Victims of Sexual Assault

This chapter describes the range of services an immigrant victim of sexual assault can access through different programs and services of the health care system. The Health Care Charts³ contains state-by-state information that helps victims and their advocates identify what health services immigrant victims can access, depending on the State they live in and their immigration status. The four health care charts cover the following topics:

- Coverage for Forensic Costs for Undocumented Immigrants
- Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence
- Pre-Natal Care for Qualified and Non-Qualified Immigrants
- Emergency Medicaid for Non-Qualified Immigrants

Each chart presents a detailed overview of the availability and accessibility of health care services and coverage for qualified and unqualified immigrants. Instructions for understanding the charts are summarized below.

The chart *Coverage for Forensic Costs for Undocumented Immigrants*⁴ lists the state-by-state legal rights and procedures governing the provision of forensic examinations to victims of sexual assault. The chart is divided into three columns: State; Forensic Examination Laws; and the Process to Receive Payments for Examination Costs. When determining out whether a victim of sexual assault is eligible for a forensic exam, first identify the applicable state in which the exam will be sought. Next, identify the following factors that collectively assist in the determination of whether a sexual assault victim may access a forensic examination free of charge:

- In which state the sexual assault took place
- When, if at all, the victim reported the sexual assault crime
- Whether the jurisdiction provides Sexual Assault Nurse Examiners
- Whether the law requires payment for the examination and, if otherwise eligible, the process for reimbursement of costs associated with the exam.

The chart *Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence*⁵ is separated into two-sections – a mini-chart followed by a detailed chart for each U.S. state and territory setting forth the relevant provisions for eligibility, compensation, and the application process for crime victim compensation.⁶ It may be helpful to identify the following factors as addressed by the chart when determining a crime victim's eligibility for compensation of costs associated with the crime as well as to determine availability and accessibility of post-assault healthcare:

- The victim's immigration and residency status
 - Is the victim a qualified immigrant (e.g. lawful permanent resident, VAWA self-petitioner, refugee, asylee, trafficking victim)
 - Is the victim lawfully present (e.g. they have a case pending for legal status with the Department of Homeland Security (DHS), including a pending U-visa application)
- How long the immigrant has been in the country
- What the crime was and the involvement of the victim in the crime (e.g., victim, aiding a victim, attempting to prevent the crime)
- In which state the crime took place
- When, if at all, the victim reported the crime
- The relationship of the person applying for compensation to the crime victim
- Whether the victim cooperated with law enforcement

³ Available at <http://iwp.legalmomentum.org/public-benefits/health-care>

⁴ Available at http://iwp.legalmomentum.org/public-benefits/health-care/Ch17_Charts_Forensic-Exams-MANUAL-ES.doc/view

⁵ Available at: http://iwp.legalmomentum.org/public-benefits/health-care/17_Chart_PostAssaultHealthCare-MANUAL-ES.doc/view

⁶ All states operate compensation programs. According to the National Association of Crime Victim Compensation Boards, all states require the victim to report the crime except Vermont. Reporting times vary from 48 hours to several days to "a reasonable period." See <http://www.nacvcb.org/progdir.html>.

Access to Health Care for Immigrant Victims of Sexual Assault

- All expenses incurred as a result of the crime (e.g., medical, psychiatric, work loss, funeral expenses, rehabilitation costs)

The *Pre-Natal Care for Qualified and Non-Qualified Immigrants*⁷ chart identifies the following for each state: Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants; Coverage; and Eligibility/Application Process. The chart also explains the federal law controlling access to public benefits based on immigration status, and in addition identifies health care coverage for children immigrants. To determine whether a woman is entitled to coverage for pre-natal medical care, first identify the state in which she is trying to access care. Upon locating the state in the chart, consider the following questions as addressed by the chart when determining a woman or child's health care coverage options:

- The pregnant woman's immigration and residency status
 - Is the victim a qualified immigrant (e.g. lawful permanent resident, VAWA self-petitioner, refugee, asylee, trafficking victim)
 - Is the victim lawfully present (e.g. they have a case pending for legal status with the Department of Homeland Security (DHS), including a pending U-visa application)
- How long the immigrant woman has been in the country
- What specific care or treatment is required
- Whether the pregnant woman has applied for or received a social security number
- Whether the care for which coverage is sought constitutes emergency pre-natal care
- The age of the child or pregnant woman seeking health-care services
- The pregnant woman's income level

The *Emergency Medicaid for Non-Qualified Immigrants*⁸ chart provides an introductory discussion on the federal laws that define what constitutes an emergency medical condition, as well as discusses federal Medicaid eligibility requirements. While all states are constrained by federal law in their ability to provide public benefits to certain "non-qualified" immigrants, all states provide them coverage for emergency medical services. This is defined by federal law as any service necessary to protect life and safety. The state-by-state chart identifies the state variations in eligibility guidelines for emergency Medicaid programs. Specifically, the chart identifies the following for each state: State Laws Concerning Emergency Medicaid; Coverage; and Application Process. To determine eligibility status for emergency Medicaid, first identify the applicable state. Next, identify these following factors that will assist you in making the requisite eligibility determination:

- The applicant's medical condition
- When the medical condition arose
- Whether the condition for which treatment and coverage is sought constitutes an emergency medical condition as defined by federal and state law
- What specific services are sought and the costs incurred to treat the emergency medical condition
- Whether the applicant for aid has applied for or received a social security number
- The applicant's income level

In addition to the information provided by the state-by-state health charts, it is important to note that federal funded Community Health Centers and Migrant Health Centers provide services to underserved populations, which may include undocumented immigrants.⁹

The state, local, or federally funded or subsidized health care that each immigrant victim can access varies based upon her immigrant status or U.S. citizenship. Undocumented immigrant victims are guaranteed access

⁷ Available at: http://iwp.legalmomentum.org/public-benefits/health-care/17_Charts_Pre-Natal_Care_Chart-MANUAL-ES.doc/view

⁸ Available at: http://iwp.legalmomentum.org/public-benefits/health-care/17_Emergency-Medicaid-Chart-MANUAL-ES.doc/view

⁹ Department of Health and Human Services, Recovery Act: Health Centers: New Access Point Grant Awards, available at <http://www.hhs.gov/recovery/hrsa/applicant.html>. See *supra* Chapter 4, Access to Programs and Services That Can Help Victims of Sexual Assault.

Access to Health Care for Immigrant Victims of Sexual Assault

to some health care benefits as a matter of law. Legal immigrants and battered immigrants who are eligible under the Violence Against Woman Act (VAWA) have more access to public benefits and subsidized health care under federal and state laws than undocumented immigrants.

Health Care Reforms of 2010: The Patient Protection and Affordable Care Act¹⁰ and the Health Care Education Act of 2010¹¹ expand access to health care for some immigrants. These laws will over time improve the ability of many immigrant victims of sexual assault and domestic violence to receive treatment for their injuries, post-assault health care and prenatal care. This expanded access is accomplished in two different and important ways, by providing additional funding for federally qualified health centers and by providing some additional access to health care for immigrants who are “legally present” in the United States.

Expanded Funding for Federally Qualified Health Centers: The 2010 Health Care reforms provide significant additional funding for federally qualified health centers that will significantly expand the ability of community health centers to serve greater numbers of patients. Federally qualified health centers (FQHC) provide primary care to all persons without regard to ability to pay. These HHS funded health centers provide –

“comprehensive, culturally competent, quality primary health care services to medically underserved communities and vulnerable populations. Health centers are community-based and patient-directed organizations that serve populations with limited access to health care. These include low income populations, the uninsured, those with limited English proficiency, migrant and seasonal farmworkers, individuals and families experiencing homelessness, and those living in public housing.”¹²

Following the passage of 2010 health care reforms, all immigrant victims of sexual assault and domestic violence and all other immigrants remain eligible for the following:¹³

- Emergency health care under federal law
- Emergency Medicaid if low income
- Non-emergency health services provided by community health centers, migrant health centers, federally qualified health centers, and safety-net hospitals

These health care options are open to all undocumented immigrants, including immigrant victims. An undocumented immigrant victim of sexual assault would be eligible to receive emergency treatment for injuries that resulted from her sexual assault (with assistance from Emergency Medicaid if she is low income). For ongoing health care needs beyond what can be covered in her state under the Emergency Medicaid program, the victim could seek treatment from a community or migrant health center in her community.

Under the 2010 health care reform legislation undocumented immigrants (who are not lawfully present) are not allowed to purchase private health insurance at full cost through the insurance exchanges; are not eligible for premium tax credits or cost-sharing reductions; and are not eligible for Medicare, non-emergency Medicaid or the Child Health Insurance Program. Undocumented immigrants are exempt from the individual mandate to purchase health insurance.¹⁴ Children of undocumented parents will have access to health care under the following circumstances:

- U.S. citizen or lawfully present immigrant children are eligible to purchase health care insurance through the state insurance exchanges through the purchase of child-only coverage.

¹⁰ Pub. Law No. 111-148 (2010)

¹¹ Pub. Law No. 111-152 (2010)

¹² Health Resources and Management Administration, U.S. Department of Health and Human Services, Health Care Center Program: What is a Health Center, available at <http://bphc.hrsa.gov/about/>.

¹³ National Immigration Law Center, How Are Immigrants Included in Health Care Reform (April 2010) available at <http://www.nilc.org/immspbs/health/immigrant-inclusion-in-HR3590-2010-04-19.pdf>

¹⁴ National Immigration Law Center, How Are Immigrants Included in Health Care Reform (April 2010) available at <http://www.nilc.org/immspbs/health/immigrant-inclusion-in-HR3590-2010-04-19.pdf>

Access to Health Care for Immigrant Victims of Sexual Assault

- U.S. citizen and lawfully present immigrant children are eligible for premium tax credits and reduced cost-sharing.
- U.S. citizen and lawfully residing immigrant children may be eligible for Medicaid or CHIP in states that have elected to provide this coverage.¹⁵

Lawfully Present Immigrants: The Patient Protection and Affordable Health Care Act provide limited federal health care coverage to immigrants who are lawfully present in the United States. The term “lawfully present” immigrant includes, but is not limited to, “qualified immigrants” who have to some extent been eligible for Medicaid funded health care under prior law.¹⁶ In addition to lawful permanent residents and other “qualified immigrants” the term has been defined to include other immigrants who are in the U.S. lawfully, such as U-visa victims, persons who receive deferred action status, and spouses and children of U.S. citizens who have applied for lawful permanent residency.¹⁷ Lawfully present immigrants receive the following health care access under the 2010 health care reforms:¹⁸

- Lawfully present immigrants –
 - May purchase health care from the state health care insurance programs;
 - Are eligible for premium tax credits and cost-sharing reductions for health care;
 - Are eligible for temporary high-risk patient pools and “basic health plans” offered by their state;
 - Have no waiting periods before they may enroll in state insurance exchanges or before they may receive premium tax credits
 - Are subject to the individual mandate to obtain health insurance and related tax penalties for not obtaining health insurance unless exempt due to low-income or unless they meet other specific exemptions
- Current federal immigration restrictions on access to Medicaid continue including the five year bar that requires lawfully residing and low income immigrant adults to wait 5 years before being able to receive Medicaid funded health care.¹⁹

Children and pregnant women may be able to access Medicaid funding through the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA).²⁰ Beginning in April 2009, states have been able to choose to provide Medicaid and the Children’s Health Insurance Program (CHIP) benefits to lawfully residing children and pregnant women. In states that elect this option, lawfully present children and pregnant women are eligible for Medicaid and CHIP funded health care. However, in states that do not choose this election lawfully present immigrant children and pregnant women are subject to the 5 year bar and must wait five years before they can receive Medicaid or CHIP health insurance coverage.²¹

When states elect the option to provide Medicaid or CHIP funded health care to lawfully residing children and pregnant women under CHIPRA, examples of adult immigrant sexual assault victims who will be Medicaid eligible include noncitizen victims:

- Who either first entered the U.S. prior to August 22, 1996 or who have been lawful permanent residents for more than 5 years who are
 - Lawful permanent residents
 - Conditional permanent residents
 - Battered spouse waiver applicants
 - VAWA self-petitioners
 - VAWA cancellation applicants;

¹⁵ See examples of immigrant victims and their children who could qualify below.

¹⁶ Section 431(b) and (c) of PRWORA, 8 U.S.C. § 1641(b) and (c) (2000). See discussion Medicaid later in this chapter.

¹⁷ National Immigration Law Center, *FACTS ABOUT New State Option to Provide Health Coverage to Immigrant Children and Pregnant Women*, (April 2009), also available at <http://www.nilc.org/immspbs/cdev/ICHIA/ICHIA-facts-2009-04-01.pdf>. The Center for Medicare and Medicaid Services will issue regulations fully defining this category as CHIPRA is implemented.

¹⁸ National Immigration Law Center, *How Are Immigrants Included in Health Care Reform* (April 2010) available at <http://www.nilc.org/immspbs/health/immigrant-inclusion-in-HR3590-2010-04-19.pdf>

¹⁹ ¹⁹ National Immigration Law Center, *How Are Immigrants Included in Health Care Reform* (April 2010) available at <http://www.nilc.org/immspbs/health/immigrant-inclusion-in-HR3590-2010-04-19.pdf>

²⁰ Public Law No. 111-3, 2009 (H.R. 2).

²¹ ²¹ National Immigration Law Center, *How Are Immigrants Included in Health Care Reform* (April 2010) available at <http://www.nilc.org/immspbs/health/immigrant-inclusion-in-HR3590-2010-04-19.pdf>

Access to Health Care for Immigrant Victims of Sexual Assault

- Qualified immigrants
- Non-citizens who are pregnant who are
 - Lawful permanent residents
 - Conditional permanent residents
 - Battered spouse waiver applicants
 - VAWA self-petitioners
 - VAWA cancellation applicants
 - Qualified immigrants
 - U visa recipients and
 - Immigrants who have received deferred action status.

Examples of children who will be eligible for state funded health care without any 5 year waiting period under SCHIP when states elect to offer coverage under CHIPRA are under 21 year old children who are:

- VAWA self-petitioners
- VAWA cancellation of removal applicants
- Children included in their parents VAWA self-petition or cancellation of removal application
- Child trafficking victims
- Children of trafficking victims
- Child U-visa recipients
- Children of U-visa recipients
- Child who are granted deferred action from DHS
- Lawful permanent residents
- Qualified immigrants

Health Care Reform 2010 Verification Requirements

Immigrants who qualify for access to health insurance, Medicaid, and/or CHIP must provide verification of eligibility in order to purchase health care through the insurance exchanges or to access Medicaid or CHIP.

Health Insurance Exchange Verification: The verification requirements to for every person purchasing health insurance through the state health insurance exchange --

- Citizens: verification of citizenship conducted by the Social Security Administration
- Lawfully present immigrants: The Department of Homeland Security verifies proof of lawfully present status

Medicaid and CHIP Verification: The Medicaid and CHIP programs maintain the same health care verification requirements for citizens and legal immigrants under prior law.

- Citizens:
 - Are subject to the 2005 documentation of citizenship and identify requirements;
 - States have the option to verify through the Social Security Administration under CHIPRA
- Lawfully present immigrants are subject to benefits eligibility verification of legal immigration status through --
 - The Systematic Alien Verification for Entitlements (SAVE) system,²² or
 - Providing the benefits granting agencies copies of the prima facie determination letter or the approval notice in the victim's VAWA self-petitioning case or copies of an approval notice for a family based visa application (I-130) filed by the victim's abusive spouse together with evidence of abuse.
 - The agency may use a special fax-back verification system developed for verification of benefits eligibility of qualified battered immigrants with pending or approved cases as Violence Against Women Act (VAWA) self-petitioners²³

²² Any case that is protected by VAWA confidentiality will have not data about the case in the SAVE system as DHS is precluded by VAWA confidentiality laws from listing any information about any VAWA, T or U visa case in the SAVE system. The alternate verification system developed for VAWA immigration cases is described in, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61344 .

²³ For a complete discussion on how to help an immigrant victim of sexual assault or domestic violence obtain benefits verification of benefits eligibility see the public benefits Chapter 16 of this manual.

Forensic Exams²⁴

If an immigrant victim of sexual assault enters the health care system following a sexual assault, she may need access to a forensic exam. Most states pay for forensic examinations that serve the purpose of gathering evidence that could be helpful in the prosecution of a crime against sexual assault perpetrators. The Violence Against Women Act of 1994 helped assure that forensic examinations became more available to rape victims. However, many state laws placed restrictions on access to forensic examinations that undermined VAWA's requirements that states that receive and distribute VAWA STOP (Services, Training, Officers and Prosecutors) grant funding should promote rather than inhibit access to forensic examinations for rape and sexual assault victims. VAWA 2005 fundamentally changed the laws regarding funding of forensic examinations barring states from access to federal VAWA funding unless state statutes and policies were changed to end the following practices:

- Requiring victims to seek reimbursement from insurance carriers;²⁵ or
- Requiring victims to participate in the criminal justice system, report crimes or cooperate with law enforcement.²⁶

States receiving VAWA STOP funding must bring their laws into compliance with these requirements by 2008. **Immigration status of the victim is not relevant and does not play any role in an immigrant victim's access to forensic examinations.**²⁷

The Violence Against Women Act and Victims Of Crime Act Grants as Source of Payment for Forensic Examinations in Sexual Assault Cases

²⁴ For a comprehensive discussion of the medical forensic examination, see Chapter 5 ("Understanding Victims' Medical Needs: The Medical And Forensic Examinations") in the Victim Rights Law Center's national manual, *Beyond The Criminal Justice System: Using the Law to Help Restore the Lives of Sexual Assault Victims A Practical Guide for Attorneys and Advocates*

²⁵ 42 U.S.C. §3796gg-4(c)(2006). VAWA 2005 statutory changes were made to address the following problems. In many states sexual assault victims seeking examination and treatment who had a medical insurance policy were required to have their insurance be the initial source of payment. The states would only cover the remaining portion of the bill that is not covered by the insurance carrier. State statutes in Delaware, Illinois, Mississippi, Missouri, New Hampshire, and Pennsylvania all included provisions requiring that the victim's medical insurance carrier be billed. 11 Del. C. § 9019 (2007); 410 Ill. Stat. § 70/2 (2007); http://www.ago.state.ms/divisions/crime_victim/cvcinfo.php (last visited July 2, 2008); Mo. Ann. Stat 191.225 (2007); RSA 21-M:8-c (2007); 42 Pa. C.S.A. § 1726.1 (2007). This type of provision presented severe dangers for victims who are covered under their abusive spouse or parent's insurance policy. The abusive spouse or parent may cut off the victim's access to health insurance by deleting the victim and/or the children from his insurance coverage. Victims of sexual assault perpetrated by a stranger, acquaintances or employer often wish to hide the fact of the assault from their spouse or intimate partner. Victims fear that if their spouse or partner learns about the rape, he will blame her, abandon the relationship because she is considered dirty or unclean, or leave her and seek custody of the children. In other instances if the same person through whom the victim's medical insurance coverage has been obtained has sexually assaulted the victim, there is likelihood that the attacker would receive information about the victim's medical care. Insurance carriers routinely mail forms summarizing doctor visits and laboratory tests to the insured's mailing address, and a victim who resides with her attacker may be forced to share her mail with him. Most state statutes or policies provide little significant privacy protection for victims in this regard. New Hampshire provides an example of a state offering some limited protection. ²⁵ RSA 21-M:8-c (providing that the bill for the medical examination of a sexual assault victim shall not be sent or given to the victim or the family of the victim). The policy holds that "privacy of the victim shall be maintained to the extent possible during third party billings."

²⁶ 42 U.S.C. § 3796gg-4(d)(2006). VAWA 2005's amendments were modeled after state laws that had taken this approach. See e.g. Maine which is one of the few states that does not require a victim who received a forensic examination without charge to report the offense to a law enforcement agency. Me. Code Title 5 § 3360-M. Many other states took an opposite approach. Some states had statutory time constraints on reporting of the crime or occurrence of the examination include Indiana, Nevada, North Carolina, Oregon, and Wisconsin. Ind. Code 5-2-6.1-39(c) (2006); N.R.S. 449.244.1 (2007); N.C.G.S.A. § 143b-480.2 (2007); ORS 147 (2007); W.S.A. 939.03-08 (2007). Other states like Mississippi, provided that the victim may not be billed or held responsible for payment. Miss. Code § 99-37-25. If the "victim refuses to cooperate" with the investigation or prosecution of the case, the county that was responsible for paying the bill for the forensic exam may seek reimbursement from the victim. In Arkansas, one of the conditions for payment is that examination of the victim takes place within 72 hours of the attack, unless the victim is a minor. Ark. Code Ann. § 12-12-403 (2007). If the victim does not meet this deadline, the Crime Victims Reparations Board must find that the victim's failure to meet the requirement was for "good cause," otherwise the victim may be required to pay for the forensic exam.

²⁷ 42 U.S.C. §§3796gg-4(d)(2006) makes no mention of immigration status.

Access to Health Care for Immigrant Victims of Sexual Assault

Currently all 50 states and Washington, D.C., as well as American Samoa, Guam, North Mariana Islands, Puerto Rico, and U.S. Virgin Islands receive both VAWA STOP grants and Victims of Crime Act (VOCA) grants.

VAWA provides incentives for states and other governmental entities to cover the costs of forensic examinations, thereby relieving victims of this burden. According to VAWA, any state receiving money through the STOP Formula Grant Program requires grantees to incur the full out-of-pocket cost of forensic medical examinations of sexual assault victims.²⁸ VAWA allows states to implement any type of payment procedure that includes at least one of the following options:

- Provide the exam free of charge;
- Arrange for victims to receive the exam free of charge; or
- Reimburse the victims for the full cost of the exam.

States opting to reimburse victims must also ensure that:

- the reimbursement covers the full cost of the exam, without any deductible requirement or limit on the amount of reimbursement;
- the reimbursing entity gives victims the opportunity to apply for reimbursement for at least one year following the exam;
- the reimbursement is provided no later than 90 days after written notification of the victim's expense;
- the entity providing the examination informs all victims about the reimbursement policies at the time of the exam; and
- victims with limited or no English proficiency must be provided with information about the exam and reimbursement policies, and translated versions of the written materials routinely provided in English should be available.²⁹

Additionally, states have the option of using VOCA Victim Compensation Grant Program funds to pay for exams or reimburse victims. While VOCA does not require governments to reimburse sexual assault victims for examination costs in order to receive funds, the states may use the VOCA funds for this purpose, at their own discretion.

Programs and service providers that receive federal funds such as VAWA STOP grants and VOCA grants must abide by nondiscrimination provisions in federal law, which states that:

“no person in any state shall, on the grounds of race, color, religion, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with, any program or activity receiving federal financial assistance, pursuant to federal statutes and regulations³⁰

Taken together the provisions listed above mean that immigrant and Limited English Proficient (LEP) victims of sexual assault should have the same access to forensic examinations with payments for the exam made through VAWA, VOCA or other government funding, as any other victim of sexual assault, without regard to the victim's immigration status or English language proficiency.

²⁸ 42 U.S.C. §§ 3796gg-1(d)(2), -4 (2000).

²⁹ 42 U.S.C. § 2796gg- 4 (2000); 67 Fed. Reg. 5,258, 5,262 (Feb. 5, 2002).

³⁰ Department of Justice, Final Program Guidelines, <http://www.ojp.usdoj.gov/ovc/welcovc/scad/guides/vaguide.htm> (last updated December 28, 2004), the quote concludes by citing: Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789d (2000), and Department of Justice Nondiscrimination Regulations, 28 C.F.R. Part 42, Subparts C, D, E, and G (2006); Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, *et seq.* (2000); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (2000); Subtitle A, Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.* (2000) and Department of Justice regulations on disability discrimination, 28 C.F.R. Part 35 and Part 39 (2006); Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681-1683 (2000); and the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, *et seq.* (2000).

Access to Health Care for Immigrant Victims of Sexual Assault

Primary Source of Payment for Forensic Examinations in Sexual Assault Cases: State-by-State Analysis

The following discussion provides an overview of the state-by-state detailed information in the forensic exam chart is available at: http://iwp.legalmomentum.org/public-benefits/health-care/Ch17_Charts_Forensic-Exams-MANUAL-ES.doc/view. The majority of states have passed legislation outlining procedures and designating an entity responsible for providing the cost of forensic exams in sexual assault cases.³¹ Various states have passed additional legislation providing that sexual assault victims should never be billed for the cost of the examination.³² For example, these states may require that the state's law enforcement agency or Victims' Compensation Board pay for the forensic medical examinations of victims. Most of these states require that the hospital performing forensic examinations apply directly to the local law enforcement agency or Victims' Compensation Board for reimbursement.

In the few states that bill victims directly, the hospital or examination provider is required to inform victims of how to receive reimbursement from the Victims' Compensation Board or is required to assist victims in filing an application. Most of the states that do not have legislation setting out who will pay the cost for the forensic examination and instead follow well-established and publicized local procedures. For example, in Hawaii, victims may apply to the Crime Victim Compensation Commission of the Public Health Department of the State of Hawaii for reimbursement.³³

The scope of the medical examination and medical treatment for which the state will pay varies from state to state. Most states include language in their statutes or policies stating that costs directly associated with the initial forensic medical examination will be covered or reimbursed. However, follow-up examinations, prescribed medications, and psychological treatment may not necessarily be included. Many states allow victims to apply directly to a Victims' Compensation Program for reimbursement of these and other additional costs. Maine's statutes, for example, provide that its Victims' Compensation Fund shall furnish the costs of treatment for pregnancy and sexually transmitted diseases (STDs) in addition to the initial forensic medical examination.³⁴ Delaware's statutes specifically authorize that the covered cost includes treatment for the prevention of venereal disease and one follow-up visit.³⁵ Victims may apply for reimbursement for other costs. In Mississippi, hospitals are not permitted to bill the victim for the initial examination and in cases where further medical treatment has been billed to the victim, the statute states that the victim should be given information about the availability of victim compensation and the procedure for applying for reimbursement.³⁶

Other jurisdictions, including Connecticut, Iowa, Kentucky, Maryland, Pennsylvania, South Carolina, and Vermont, as well as the U.S. Virgin Islands, affirmatively provide for some treatment costs beyond forensic examination.³⁷ Puerto Rico³⁸ and Tennessee³⁹ provide for the cost of treatment, and additionally allow for some amount of payment for lost wages to be recovered if the victim provides proof of the loss.

However, at the other end of the spectrum there are significant limitations on the assistance provided to victims, sexual assault victims include the following examples. Texas law enforcement agencies are not required to pay for treatment of the injuries of sexual assault victims.⁴⁰ In West Virginia, treatment of injuries and testing for pregnancy and diseases "may not" be paid from the allocated fund.⁴¹

³¹ See, e.g., Pennsylvania's Crime Victim's Act (12 P.S. § 11.101 *et seq.*) (providing for submission of a claim to the Office of Victims' Services by a hospital or licensed health care provider).

³² See, e.g., Alaska (AS 18.68.040) and South Dakota (S.D. Codified Laws § 22-22-26), where billing of sexual assault victims for forensic examinations is prohibited.

³³ Haw. Rev. Stat. § 351-62 (2007).

³⁴ Me. Code Title 5 § 3360-M (2007).

³⁵ 11 Del. C. § 9019 (2007).

³⁶ Miss. Code § 99-37-25 (2007).

³⁷ See <http://www.jud.state.ct.us/crimevictim/#Program> (last visited July 2, 2008); Iowa Code Title XVI, subtitle 3, § 915.80 *et seq.* (2007); Ky. Rev. Stat. Ann. § 346.130 (2007); Md. Code Ann., Crim. Proc. § 11-810 (2007); 18 P.S. § (11.707(b) (2007); South Carolina Code § 16-3-1180 (2007); Vermont Statutes § 13.167.5351 (2007); Virgin Island Code 34.7.165 (2007).

³⁸ See Compensation Table at http://www.justicia.gobierno.pr/rs_template/v2/CompVic/CV_Tabla.html (last visited July 2, 2008).

³⁹ See Application for compensation at <http://www.treasury.state.tn.us/injury/application.pdf> (last visited July 2, 2008).

⁴⁰ Tex. Code Crim. Proc. Art. 56.06 (2007).

⁴¹ W.VA Code § 61-8B-16 (2007).

Access to Health Care for Immigrant Victims of Sexual Assault

Effect of rules for forensic examinations on immigrant victims

VAWA 2005's requirements that states receiving STOP funding have up to 2008 to end law enforcement reporting and cooperation requirements in connection with the provision forensic examinations are particularly helpful to immigrant victims. State laws that connected payment for forensic examinations with law enforcement reporting, and/or set deadlines by which reports to law enforcement must be made created significant barriers making it more difficult for undocumented immigrant sexual assault and rape victims. Undocumented immigrant victims often fear that reporting to law enforcement and cooperating in criminal prosecutions will lead to discovery of their undocumented immigration status and deportation. Abusers, traffickers, and crime perpetrators often threaten undocumented immigrant victims with deportation if they report the sexual assault or family violence. For many undocumented immigrant victims fear of deportation keeps them from obtaining a forensic examination and post-assault health care.

To counter these fears, advocates, health care providers and attorneys working with immigrant victims need to know that forensic medical exams and emergency Medicaid are equally accessible to undocumented immigrant victims, to immigrant victims with legal immigration status, and to citizens. According to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, health care and social services providers are not required to ask about and/or report immigration status of victims seeking health care service as a victim of sexual assault, domestic violence, trafficking, or victims of other criminal activity.⁴²

Government benefits workers are legally allowed to ask about the immigration status of only the person applying to receive benefits for him or herself.⁴³ Government benefits staff may ask questions about the social security number and immigration status of a person not applying for benefits only after they first disclose to the individual how the government will use the information, including whether or not the information will be reported to immigration authorities.⁴⁴ Law enforcement officials are not required by federal law to inquire into the immigration status of victims.

Law enforcement officials in some local jurisdictions have written agreements with the Attorney General deputizing specific officials to enforce immigration laws.⁴⁵ These are called section 287(g) agreements. As of June 2008, 47 jurisdictions have Memoranda of Agreement (MOA) with DHS.⁴⁶ Section 287(g) officers must receive specialized training from DHS and are responsible for complying with all immigration laws, including enforcement and compliance with VAWA confidentiality.⁴⁷ State laws cannot supersede federal laws on immigration matters.⁴⁸

⁴² Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996) (hereinafter, IIRIRA).

⁴³ Department of Health and Human Services and Department of Agriculture, Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits (2000), at <http://www.hhs.gov/ocr/nationalorigin/triagency.html>.

⁴⁴ Department of Health and Human Services and Department of Agriculture, Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits (2000), at <http://www.hhs.gov/ocr/nationalorigin/triagency.html>.

⁴⁵ Section 287(g) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1357(g) (2000) (hereinafter INA). Section 287(g)(10) further states that this section does not require states or municipalities to seek a similar agreement to allow their employees to report undocumented immigrants or otherwise cooperate with the immigration authorities.

⁴⁶ See the ICE website for an up-to-date list: http://www.ice.gov/partners/287g/Section287_g.htm.

⁴⁷ Leslye Orloff, "Legal Protections for Immigrant Victims of Violence Against Women: Family, Law, Immigration Relief and VAWA Confidentiality." Presentation for the Mecklenburg County Court, Family Court and Criminal Court Judges. Charlotte, North Carolina. August 30, 2007

⁴⁸ Michael Wishnie, *Laboratories of Bigotry? Devolution of the Immigration Power, Equal Protection, and Federalism*, 76 N.Y.U. L. Rev. 493, 532 (2001). See, e.g., *De Canas v. Bica*, 424 U.S. 351, 354 (1976) ("The power to regulate immigration is unquestionably exclusively a federal power."); *Chae Chan Ping v. United States (The Chinese Exclusion Case)*, 130 U.S. 581, 609 (1889) (stating that federal immigration power is "incapable of transfer" and "cannot be granted away"); *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1876) ("The passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belongs to Congress, and not to the States.").

Advocates and attorneys working with immigrant victims should assess a victim's eligibility for VAWA, T, or U visa immigration status as soon as possible. This may help counter the victim's fears about deportation and threats of deportation made by abusers, traffickers, and crime perpetrators. Victims who qualify for relief as VAWA self-petitioners, as crime victims (U visa), or trafficking victims (T visa) may be more willing to cooperate in criminal investigations or prosecutions if they can attain legal immigration status. Victims who know they can qualify for legal immigration status may be more willing to report sexual assaults. It is important to review both eligibility for VAWA, T-visa, or U-visa immigration relief and the red flags check list contained in the *Introduction to Immigration Relief and Glossary* in this manual. Advocates should consult with immigration experts who have experience working with immigrant victims before victims apply for VAWA immigration relief. If any red flags exist in the case, victims need to be represented by an experienced immigration attorney.

Every state provides a system, though procedures vary widely, so that victims of sexual assault may be compensated for the costs of their forensic medical examinations. With the state-by-state charts⁴⁹ victims and victims' advocates can assess the manner in which their state handles the cost of these exams, and assess if an immigrant survivor can safely access these programs for payment of exams. Safety is a concern for victims because some state requirements, such as crime reporting and insurance company payments, need to be considered when assessing the safety of a sexual assault victim who gets a forensic medical examination through these programs. The charts will also assist in exploring what additional subsidized health care and mental health treatment each immigrant victim is eligible to receive based on her citizenship or immigration status.

Victims and victims' advocates should also seek information from the appropriate state authority or crime victims' compensation organization on payments for forensic examinations, and then carefully review the state specific policies. The U. S. Department of Justice's Office on Violence Against Women maintains a website that consolidates this information that can help guide victims to the appropriate authority:

- <http://www.ojp.usdoj.gov/state.htm> (This page includes a clickable map that leads to a page listing the contact information for the appropriate crime victim compensation agency in each state.)
- <http://www.ojp.usdoj.gov/vawo/faqforensic.htm> (This page lists the answers to frequently asked questions about payment requirements for a forensic exam from the STOP Formula Grant Program.)

PRWORA, Emergency Medicaid, and Victims of Sexual Assault

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),⁵⁰ restricted non-citizen eligibility for a wide range of public benefits programs, including Temporary Assistance for Needy Families (TANF), food stamps, Supplemental Security Income (SSI), Medicaid, and the State Child Health Insurance Program (SCHIP). It also gave states broad new authority to set social welfare policy for immigrants. Despite significantly reducing access to benefits for non-citizens, PRWORA contained provisions that preserved access to services necessary to protect life or safety.⁵¹ Emergency Medicaid was explicitly listed as a program required to be available to all persons without regard to their immigration status.⁵² Under federal law, Emergency Medicaid is a service necessary to protect life or safety, as a matter of law.⁵³ This

⁴⁹ Available at <http://iwp.legalmomentum.org/public-benefits/health-care>

⁵⁰ The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (PRWORA) P.L. No. 104-193.

⁵¹ Specification of Community Programs Necessary for the Protection of Life or Safety Under Welfare Reform Legislation. AG Order 2049-96, 61 Fed. Reg. 45,985 (Aug. 30, 1996). See also Leslye E. Orloff, Leandra Zarnow and Yris Cornwall, *Facilitating Access to TANF for Battered Immigrants: A Pilot Training Manual for TANF Eligibility Workers* (HHS Funded Training Manual: Legal Momentum, 2001).

⁵² Section 401(b) of PRWORA, 8 U.S.C. § 1611(b) (2000); Emergency medical assistance must be provided to all immigrants regardless of their status. Emergency Medicaid is available in all cases where the patient needs treatment for medical conditions with acute symptoms that could jeopardize the patient's health, impair body functions, or cause dysfunction of any bodily organ or part. 42 U.S.C. § 1396(b)(v)(3) (2000). This definition includes all labor and delivery.

⁵³ Specification of Community Programs Necessary for the Protection of Life or Safety Under Welfare Reform Legislation. Specification of Community Programs Necessary for the Protection of Life or Safety Under Welfare Reform Legislation. AG Order 2049-96, 61 Fed. Reg. 45,985 (Aug. 30, 1996).

Access to Health Care for Immigrant Victims of Sexual Assault

means that undocumented immigrants cannot be turned away from services that can be paid for by Emergency Medicaid.

Every state has enacted an Emergency Medicaid program. Despite constraints imposed by federal law on states' ability to provide public benefits to certain types of "non-qualified" immigrants,⁵⁴ all states must provide all immigrants coverage for emergency medical services. While program features and restrictions vary somewhat across the states, for purposes of Emergency Medicaid, the law in most states' borrows essential definitions and restrictions from federal law, creating a degree of conceptual uniformity. Since the federal PRWORA mandates the provision of emergency benefits to nonqualified immigrants, most states have borrowed the federal definition of "emergency medical condition" in order to ensure their compliance.

Most states provide basic Emergency Medicaid coverage that includes emergency labor and delivery, and many states will also cover normal labor and delivery under Emergency Medicaid.⁵⁵ Some states offer some more expansive healthcare coverage for low-income persons or undocumented immigrants. For example, California offers "Medi-Cal" benefits for patients needing emergency medical care, as well as for those requiring long-term care.⁵⁶ Medi-Cal covers inpatient and outpatient care, with a broad spectrum of services: pharmacy, radiology, laboratory, dialysis and dialysis-related care. However, the care offered is limited. Medi-Cal coverage does not include continuation of services or follow-up care after the emergency is resolved. California also offers cancer screening and treatment for low-income and undocumented immigrants.

Similarly, the District of Columbia offers additional healthcare to supplement Medicaid coverage. "DC Healthy Families Expansion"⁵⁷ is offered for immigrant children and "DC Healthcare Alliance"⁵⁸ is offered for both children and adults. Both programs are comprehensive and extend coverage significantly beyond what is covered under Medicaid's "emergency medical condition."

The types of medical services states cover under Emergency Medicaid's definition of "emergency medical condition" includes the following examples from state statutes:

- In Vermont, the definition of "emergency medical condition" specifically references harm to *mental health* as well as physical health,⁵⁹ but mental health is not covered for non-qualified immigrants.⁶⁰
- "Emergency medical condition" in Michigan can include in-patient medical detoxification for substance abuse in a life threatening situation.⁶¹
- In Louisiana, pharmacists can release a seventy-two hour supply of a drug without prior approval if the pharmacist or the prescribing physician determines and endorses that an emergency situation exists.⁶²
- Arizona's statute limits its coverage to "current medical condition," but goes on to provide that, although an initial injury may be stabilized, such stabilization does not necessarily mark the end of the emergency medical condition.⁶³

⁵⁴ States can opt to provide benefits to "non-qualified" immigrants using state funds and many states have chosen to fund health care and other benefits for immigrants with state funds. For a list of public benefits programs in each state, see state-by-state listings available at: <http://iwp.legalmomentum.org/ovw-grantee-technical-assistance/frequently-asked-questions/public-benefits/state-public-benefits>. These charts provide assistance in determining the range of benefits (state or federally funded) available to immigrant victims of sexual assault in your state.

⁵⁵ See, e.g., Idaho Admin. Code § 16.03.01.250 (2007) and Kan. Econ. & Employment Support Man. § 2690 (2007).

⁵⁶ Cal. Welf. & Inst. Code §14007.5.

⁵⁷ DC Income Maintenance Administration Policy Manual, Part IV §7.4.2.

⁵⁸ http://www.dc.gov/mayor/health_care/index.htm (last visited Nov. 5, 2007).

⁵⁹ Code of Vermont, Section M103.3.A (2007).

⁶⁰ Code of Vermont, Section M170.8(a).

⁶¹ Michigan Department of Community Health, Medical Services Administration Bulletin MSA 05-61 (2005).

⁶² Louisiana Medicaid Program Provider Manual 37.5.4 (2007).

⁶³ Az. Health Care Cost Containment System Medical Policy Manual, Ch. 1100 (2007).

Access to Health Care for Immigrant Victims of Sexual Assault

Other state statutes only provide very basic health coverage under “emergency medical condition.”

- New Mexico’s statute explicitly states that psychiatric, psychological and rehabilitative services are *not* covered, and surgical procedures and unscheduled emergency procedures are excluded as well.⁶⁴
- The Arkansas statute specifically delineates what is not covered to include the worsening of chronic conditions, because it is not considered acute, and, therefore, is excluded.⁶⁵

Immigrant victims of sexual assault need help from advocates, health care providers, prosecutors, police, and attorneys to access the full range of Emergency Medicaid funding available in each state. Assistance from trained professionals can help ensure that immigrant victims of sexual assault are able to access the full range of medical treatment available to them for the injuries, trauma, and STDs they may have contracted as a result of an assault. According to a representative study of women living in the United States, 1 in 5 women has experienced an attempted or completed sexual assault.⁶⁶ Immigrant women in the United States account for more than 1 in 10 females in the United States.⁶⁷ Studies conducted in immigrant Latina and Asian communities have found that immigrant women have a higher rate of sexual assault than reported by U.S. residents as a whole (30-50% versus 25%, respectively).⁶⁸ For months or years following sexual assault, immigrant victims may experience difficulty in recovering and re-establishing a sense of safety as they struggle to adapt to a new country, culture and language.⁶⁹ When immigrant victims of sexual assault and domestic violence receive immediate and necessary medical care, they can begin healing sooner.

Who Qualifies for Emergency Medicaid?

All immigrants, regardless of immigration status, qualify for care and services necessary for the treatment of an *emergency medical condition* (excluding organ transplants).⁷⁰

State Residency

State residency is a requirement for non-qualified⁷¹ immigrants applying for federal Emergency Medicaid benefits. According to the State Medicaid Manual, “in some cases an alien in a currently valid non-immigrant classification may meet the State rules” for residency.⁷² By statute, Congress designated the Attorney General of the United States as the government official responsible for determining what “programs necessary to protect life or safety” were to be open to all persons without regard to immigration status.⁷³ Emergency Medicaid is one of several programs that are considered “necessary to protect life or safety,” and are open to

⁶⁴ New Mexico Administrative Code 8.325.10.9 (2003).

⁶⁵ Arkansas Medical Services Policy Manual 6780 (2003).

⁶⁶ Patricia Tjaden & Nancy Thoennes, *Full Report of the Prevalence, Incidence, and Consequences of Violence against Women: Findings from the National Violence against Women Survey*. Washington DC: Department of Justice, National Institute of Justice (2000). Report NCJ 183781.

⁶⁷ Census 2000 Briefs, The Foreign Born Population: 2000, U.S. Census Bureau (2000), available at <http://www.census.gov/prod/2003pubs/c2kbr-34.pdf>.

⁶⁸ Anita Raj & Jay Silverman, *Intimate Partner Violence against Immigrant Women: The Roles of Immigrant Culture, Context, and Legal Status*, 8 *Violence Against Women* 367, 367-98 (2002); Andrea Hazen & Fernando Soriano, *Experience of Interpartner Violence Among U.S. Born, Immigrant and Migrant Latinas*, National Institutes of Justice, September 2005.

⁶⁹ Susan H. Vickers, *Beyond the Criminal Justice System: Transforming Our Nations Response to Rape*, *Victim Rights Law Center* 68 (2003).

⁷⁰ Section 401(b) of PRWORA, 8 U.S.C. § 1611(b) (2000); Emergency medical assistance must be provided to all immigrants regardless of their status. Emergency Medicaid is available in all cases where the patient needs treatment for medical conditions with acute symptoms that could jeopardize the patient’s health, impair body functions, or cause dysfunction of any bodily organ or part. 42 U.S.C. § 1396(b)(v)(3) (2000).

⁷¹ A “qualified immigrant” is an immigrant who under PRWORA, as amended by IIRIRA, is legally entitled to access federal public benefits. Non-qualified immigrants are immigrants (both lawful and undocumented) who have not specifically been granted access to federal public benefits. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 3009 et seq., §§ 401, 401, 403, 411, 412, 431.

⁷² U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, *State Medicaid Manual* § 3211.10 (1997).

⁷³ Specification of Community Programs Necessary for the Protection of Life or Safety under Welfare Reform Legislation. AG Order 2049-96, 61 Fed. Reg. 45,985 (Aug. 30, 1996).

Access to Health Care for Immigrant Victims of Sexual Assault

all documented and undocumented immigrants.⁷⁴ In addition to being open to undocumented immigrants, Emergency Medicaid helps documented non-citizens, including, but not limited to: non-citizens holding valid Employment Authorization Cards (“EAD” cards) as well as those in valid status as visitors, foreign students, and certain work-authorized non-immigrants.⁷⁵

Even undocumented immigrants who entered the U.S. unlawfully or who violated terms of their immigration visas may establish state residency.⁷⁶ The state residency requirement governs the state in which immigrant victims can seek Emergency Medicaid treatment. Advocates working with immigrant victims will need to help victims identify in which state they can apply for and receive Emergency Medicaid to cover their emergency health care needs related to sexual assault or domestic violence.

State family court case law on residency related to family court jurisdiction can be helpful in figuring out residency for Emergency Medicaid.⁷⁷ Court jurisdiction over a party in a divorce action principally depends upon whether the party is domiciled in, or is a resident of, a particular jurisdiction.⁷⁸

Immigration Status and Residency

In determining whether a party intends to establish residency or domicile in a particular state, the court will examine the intent of the party seeking the divorce, rather than any potential adverse action by a third party, such as the Department of Homeland Security⁷⁹ (DHS). Both documented and undocumented immigrants can establish residency for family court purposes.⁸⁰

Many immigrants live and work in the United States and intend to make the United States their permanent home, despite the fact that they may not currently have a legal immigration status and DHS permission to live and work permanently in the United States.⁸¹ This can be especially true for immigrant victims of domestic violence, who have been dependent on their abusers for status and may not have known about the immigrant remedies under VAWA.

⁷⁴ For a full list of programs open to both documented and undocumented immigrants, See Specification of Community Programs Necessary for the Protection of Life or Safety under Welfare Reform Legislation. AG Order 2049-96, 61 Fed. Reg. 45,985 (Aug. 30, 1996).

⁷⁵ U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, State Medicaid Manual § 3211.10 (1997).

⁷⁶ See, e.g., *St. Joseph's v. Maricopa County*, 142 Ariz. 94, 688 P.2d 986 (1984).

⁷⁷ In divorce cases, the majority of jurisdictions require the party seeking a divorce to satisfy a threshold residency requirement before their courts will adjudicate a divorce action. See, e.g., *Blair v. Blair*, 643 N.E.2d 933, 935 (Ind. Ct. App. 1994). Some states require their courts to have jurisdiction over the party seeking divorce. See, e.g., Idaho Code Ann. § 32-701 (2004); Iowa Code § 598.6 (2004); Mass. Gen. Laws ch. 208, § 5 (2004). Other states only require jurisdiction over either one of the parties in the divorce. See, e.g., Ala. Code § 30-2-5 (2003); Ariz. Rev. Stat. Ann. § 25-312 (2004); Ark. Code Ann. §9-12-307 (2004); Cal Fam. Code § 2320 (Deering 2007). However, at least one jurisdiction does not have a residency requirement at all. See *State v. Adams*, 522 P.2d 1125, 1132 (Alaska 1974).

⁷⁸ The meanings of the term “domicile” and “residence” may differ from one jurisdiction to the next. A review of case law demonstrates that these terms essentially have the same meaning, and in many jurisdictions are interchangeable. See, e.g., *Caheen v. Caheen*, 172 So. 618 (Ala.1937); *Lake v. Bonham*, 716 P.2d 56 (Ariz. Ct. App. 1986). *But see Garrison v. Garrison*, 246 N.E.2d 9, 11 (Ill. App. Ct. 1946) (holding that “residence” does not mean “domicile” but instead denotes permanent abode). Generally, in order for a party to establish his or her domicile or residency in maintaining a divorce action in a particular jurisdiction, he or she must be *physically present* in that jurisdiction and must also *intend to remain indefinitely*, or permanently, in that jurisdiction. See, e.g., *Perito v. Perito*, 756 P.2d 895 (Alaska 1988); *J.F.V. v. O.W.V.*, 402 A.2d 1202 (Del. 1979); *Williams v. Williams* 328 F. Supp. 1380 (V.I. 1971). However, in some jurisdictions, a party may still establish domicile or residency without physical presence in the jurisdiction, as long as that party has the intent to return to that particular jurisdiction to live. See, e.g., *Abou-Issa v. Abou-Issa*, 189 S.E.2d 443 (Ga. 1972); *Gasque v. Gasque*, 143 S.E.2d 811 (S.C. 1965).

⁷⁹ The agency formerly known as Immigration and Naturalization Services (INS) and later as the Bureau of Citizenship and Immigration Services (BCIS) under the administration of the Department of Homeland Security was recently renamed the U.S. Citizenship and Immigration Services (USCIS). See *In re Hanano*, 2001 Va. Cir. LEXIS 169, at *10 (holding that domicile depends upon the intent of the party rather than the potential action of a third party such as the INS).

⁸⁰ Amanda Barren et al., *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* (Leslye E. Orloff and Kathleen Sullivan eds., Legal Momentum 2004).

⁸¹ Almost one-third of the 8.8 million U.S. legal permanent residents currently residing in the U.S. (approximately 2.8 million persons) were formerly undocumented immigrants in the United States. Michael E. Fix and Passel, Jeffrey S., *Immigration and Immigrants: Setting the Record Straight*, May 1, 1994, p. 29 <http://www.urban.org/url.cfm?ID=305184>.

Access to Health Care for Immigrant Victims of Sexual Assault

Courts consistently have held that immigration status or lack thereof does not preclude an individual from establishing domicile or residency for purposes of maintaining an action in family court.⁸² In *Hanano v. Alassar*, the Court found that, despite the plaintiff's current immigration status as a non-immigrant authorized to live and work in the United States in an international organization, she was not precluded from establishing that she was an actual *bona fide* resident and domiciliary in order to establish a divorce action.⁸³ The court held that, in determining whether a party intends to establish residency, courts must look to the intent of the party, rather than any potential adverse action by a third party, such as the United States Citizenship and Immigration Service (USCIS).⁸⁴

Similarly, in *Williams v. Williams*, the court held that non-residents are not precluded from obtaining domicile, noting that individuals "need not intend to remain in a place unto death to acquire domicile."⁸⁵ This court found that the fact that non-residents admitted temporarily to the United States had declared their intent to return to their home country as part of their immigration visas did not preclude a finding of domicile. Instead, even an individual who contemplates staying for only a brief period of time may acquire domicile.⁸⁶ The only necessary element to finding domicile is the intent to make a home somewhere until some reason unrelated to the divorce makes it desirable or necessary to leave.⁸⁷

The fact that an immigrant requesting family court assistance may not be in the United States legally or does not have permanent legal immigration status in the United States is not indicative of whether he or she qualifies for legal immigration status, will qualify in the future, or is likely to be deported now or any time in the future. This means that immigration status or non-citizen status does not preclude an immigrant from gaining access to divorce courts because the court's focus of inquiry is on his or her intent to establish residence in that state, not immigration status.⁸⁸

In working with immigrant victims who are in the United States legally on an unexpired tourist visa or who are living in the United States on special non-immigrant visa for foreign nationals (G-4 visas),⁸⁹ advocates and attorneys may need to take additional steps to assure that state residency for purposes of Emergency Medicaid is established.⁹⁰ In a sexual assault or rape case, advocates working with immigrants on tourist, diplomatic, or international organization visas should review the state-by-state charts to determine if any other state might be the victim's state of residency for Emergency Medicaid purposes. If the state the victim is currently in is the only state that could be the victim's residency for Emergency Medicaid purposes, advocates should inform state officials that emergency health care is needed and that the health care must be provided. Advocates should try first to secure payment for these services through Emergency Medicaid and as a back up be prepared to help the immigrant sexual assault victim file to obtain coverage for the health care expenses through VOCA.

Federal Government Exclusive Decision Making Authority Over Immigration Status

⁸² *Dick v. Dick*, 18 Cal. Rptr. 2d 743 (Cal. Ct. App. 1993); *Rzeszotarski v. Rzeszotarski*, 296 A.2d 431 (D.C. 1972); *Nicholas v. Nicholas*, 444 So. 2d 1118 (Fla. Dist. Ct. App. 1984); *Goschalk v. Goschalk*, 138 A.2d 774 (N.J. Super. Ct. App. Div. 1958); *Das v. Das*, 603 A.2d 139 (N.J. Super. Ct. Ch. Div. 1992); *Cocron v. Cocron*, 373 N.Y.S.2d 797 (N.Y. Sup. Ct. 1975); *In re Marriage of Pirouzkar*, 626 P.2d 380, (Or. Ct. App. 1981); *Sinha v. Sinha*, 491 A.2d 899 (Pa. Super. Ct. 1985); *Bustamante v. Bustamante*, 645 P.2d 40 (Utah 1982); *In re Hanano*, 2001 Va. Cir. LEXIS 169 at *10; *Williams*, 328 F. Supp. 1380.

⁸³ *In re Hanano*, 2001 Va. Cir. LEXIS 169 at *10.

⁸⁴ *In re Hanano*, 2001 Va. Cir. LEXIS 169 at *10.

⁸⁵ *Williams*, 328 F. Supp. 1380 at 1384.

⁸⁶ *Williams*, 328 F. Supp. 1380 at 1384.

⁸⁷ *Williams*, 328 F. Supp. 1380 at 1384.

⁸⁸ However, non-citizens residing in the United States on special non-immigrant visas for foreign nationals (G-4 visa) and working for international organizations must take additional steps to establish residency. Under the special non-immigrant visas for foreign nationals, non-citizens deny residency in order to avail themselves the special financial benefits offered to World Bank employees who are non-resident foreign nationals on temporary visas. Therefore, these individuals cannot claim residency for family court purposes. *Williams*, 328 F. Supp. 1380 at 1384.

⁸⁹ *Williams*, 328 F. Supp. 1380 at 1384.

⁹⁰ In one North Carolina case, the State Medicaid agency denied emergency Medicaid benefits to an individual who was in the U.S. on an unexpired tourist visa. *Okale v. North Carolina Dep't of Health and Human Services*, 570 S.E.2d 741(N.C. Ct. App. 2002). The court said that a person holding a tourist visa by definition could not have the requisite intent to reside in the state. *Okale v. North Carolina Dep't of Health and Human Services*, 570 S.E.2d 741(N.C. Ct. App. 2002). See also, *Salem Hosp. v. Comm'r of Pub. Welfare*, 574 N.E. 2d 385 (Mass. 1991).

Access to Health Care for Immigrant Victims of Sexual Assault

Immigration laws are interpreted separately from divorce laws, jurisdictional requirements,⁹¹ and state residency requirements for purposes of Emergency Medicaid. A state determination of state residency for Emergency Medicaid or family law purposes has no effect on decisions by the DHS or by an immigration judge in any immigration case.⁹² State government findings of state residency for Emergency Medicaid purposes will not help an immigrant attain any form of immigration status for which they would not otherwise qualify.

If state officials raise concerns that findings of state residency for purposes of Emergency Medicaid may in some way control whether an undocumented victim of sexual assault will receive legal immigration status in a VAWA, U visa (crime victim), or T visa (trafficking victim) case, the advocate or attorney should point out that state administrative agency rulings and state court findings cannot determine outcomes under immigration law. Regulation of immigration is exclusively a federal power and overrides any action by a state court or legislature.⁹³ Since immigration falls within the exclusive jurisdiction of the federal government, a state's finding that an immigrant victim has residency in the case for purposes of accessing Emergency Medicaid cannot, as a matter of law, determine the outcome of an immigration case. See state by state emergency Medicaid charts⁹⁴ for more information about federal versus state laws and immigration.

What Constitutes an Emergency Medical Condition?

For victims of sexual assault, the immediate questions are:

- (1) what is covered for immigrant victims of sexual assault under the definition of “emergency medical condition” in state Medicaid statutes; and
- (2) how can immigrant victims gain access to all necessary and available medical care that will aide them best in physical, psychological and emotional recovery?

An “emergency medical condition” is defined in the §1903(v)(3) of the Social Security Act as:

A medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in (a) placing the patient's health in serious jeopardy, (b) serious impairment to bodily functions, or (c) serious dysfunction of any organ or part.⁹⁵

⁹¹ *Rajapaksha v. Jayaweera*, 5 N. Mar. I. 87, 89 (N. Mar. I. 1997).

⁹² *Rajapaksha v. Jayaweera*, 5 N. Mar. I. 87, 89 (N. Mar. I. 1997).

⁹³ Michael Wishnie, *Laboratories of Bigotry? Devolution of the Immigration Power, Equal Protection, and Federalism*, 76 N.Y.U. L. Rev. 493, 509 (2001). Immigration law derives its authority from the Naturalization Clause of the Constitution. The textual requirement of the clause, that there be a single naturalization rule that is “uniform . . . throughout the United States,” has been interpreted to establish federal exclusivity. *Id.* at 544, n. 215. The Supreme Court, to the extent that it has considered the nature of immigration power, has repeatedly concluded that this power cannot be transferred to the states. *Id.* at 532. See, e.g., *De Canas v. Bica*, 424 U.S. 351, 354 (1976) (“The power to regulate immigration is unquestionably exclusively a federal power.”); *Chae Chan Ping v. United States (The Chinese Exclusion Case)*, 130 U.S. 581, 609 (1889) (stating that federal immigration power is “incapable of transfer” and “cannot be granted away”); *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1876) (“The passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belongs to Congress, and not to the States.”). The total exclusivity of federal immigration is a fairly recent occurrence. Prior to the Immigration Act of 1990, state court judges had the authority, with a Judicial Recommendation Against Deportation (JRAD), to recommend against deportation. Lisa Fine, *Preventing Miscarriages of Justice: Reinstating the Use of “Judicial Recommendations Against Deportation,”* 12 Geo. Immigr. L.J. 491, 506 (1998). In an effort to consolidate and regulate federal immigration power, Congress repealed the JRAD in 1990 and ended the ability of the individual state court judges to directly affect the outcome of immigration cases. The revocation of JRAD eliminated the power of state court judges to get involved in and materially control immigration matters. Furthermore, by removing JRAD authority from state court judges, Congress indicated its intention to empower the federal government with exclusive control over immigration. State officials making state residency determinations, whether in family court for purposes of divorce or state government workers for benefits purposes, do not control immigration cases.

⁹⁴ Available at: http://iwp.legalmomentum.org/public-benefits/health-care/17_Emergency-Medicaid-Chart-MANUAL-ES.doc/view

⁹⁵ 42 U.S.C. § 1396b(v)(3)(A)-(C) (2004).

There is also a federal regulation⁹⁶ requiring that the condition must have had a “sudden onset;” however, the Medicaid Act does not contain this language.⁹⁷ In nearly every state, the condition for which treatment is sought must be severe and acute, such that the absence of immediate attention may lead to placing the patient’s health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of a bodily organ or part.⁹⁸

There is no definitive federal rule on when an emergency condition ends for the purposes of cutting off the Emergency Medicaid. However, there are some Court rulings that can provide guidance. In 2003, five plaintiffs from Arizona were treated for emergency medical conditions, and the state agency concluded that the emergency medical conditions had ceased when their conditions had been stabilized and they had been transferred from an acute ward to a rehabilitative type ward.⁹⁹ The court concluded that even though a patient’s initial injury is stabilized, the emergency medical condition may not have ended. The court found that the focus must be on whether the patient’s medical condition was acute and of sufficient severity that the absence of immediate medical treatment could result in (1) placing the patient’s health in serious jeopardy, (2) serious impairment to bodily functions, or (3) serious dysfunction of any bodily organ or part, which are the three consequences set forth under the statutory language.¹⁰⁰

Similarly, in another case, a patient who presented to the hospital’s emergency room with weakness and numbness in the lower extremities was diagnosed with cancer and underwent surgery. All charges incurred after the initial hospitalization were denied payment on the basis that this was not treatment of an emergency medical condition.¹⁰¹ The provider argued that all treatment rendered was for an emergency medical condition, as defined by state and federal law, because the patient’s cancer was rapidly progressing in a life-threatening manner.¹⁰² The appellate court determined that the lower court should have assessed whether the absence of the continued medical services could be expected to result in one of the three consequences outlined in the Medicaid statute.¹⁰³

However, in a different case, undocumented persons who suffered serious traumatic head injuries were not entitled to payment of their expenses for the ongoing care of chronic conditions following initial emergency treatment, because such care did not qualify as an emergency medical condition.¹⁰⁴ That court found that while the patients’ sudden and severe head injuries initially satisfied the plain meaning of Section 1903(v)(3), the continuous and regimented care subsequently provided to them did not constitute emergency medical treatment pursuant to the statute.¹⁰⁵

What Procedures Must Be Followed for Qualification?

The procedures for receiving aid vary, several states require or allow individuals to be preauthorized as Emergency Medicaid participants prior to the receipt of services. Others refuse to accept applications without a detailed description of the emergency service required, thereby eliminating the possibility of advance authorization. It is important that applicants check their state’s rules to determine what steps must be taken in order to qualify for Emergency Medicaid, as failure to follow the proper procedures and meet the stated deadlines may prevent eligibility and place the full financial burden for all services on the applicant. Note that under federal guidelines, non-qualified immigrants who are eligible for Emergency Medicaid do **not** need to

⁹⁶ 42 C.F.R. § 440.255(b)(1) (2006).

⁹⁷ See Jane Perkins, *Medical Coverage of Emergency Medical Conditions*, Clearinghouse Rev. Journal of Poverty Law and Policy, September-October 2004, 384, 384-392.

⁹⁸ There have been several cases dealing with the issue of the type and/or duration of medical services covered by emergency Medicaid. In *Lewis v. Thompson*, 252 F.3d 567 (2d Cir. 2001), the Second Circuit determined that the Welfare Reform Act’s denial of prenatal care to non-qualified immigrants had a rational basis and did not violate equal protection. Importantly, the court also held that citizen children of non-qualified pregnant women are eligible for Medicaid on the same basis as children of citizen mothers.

⁹⁹ *Scottsdale Healthcare, Inc. v. Arizona Health Care Cost Containment System*, 75 P.3d 91 (Ariz. 2003).

¹⁰⁰ *Scottsdale Healthcare, Inc. v. Arizona Health Care Cost Containment System*, 75 P.3d 91 (Ariz. 2003).

¹⁰¹ *Luna v. Div. of Social Services*, 589 S.E.2d 917 (N.C. Ct. App. 2004).

¹⁰² *Luna v. Div. of Social Services*, 589 S.E.2d 917 (N.C. Ct. App. 2004).

¹⁰³ *Luna v. Div. of Social Services*, 589 S.E.2d 917 (N.C. Ct. App. 2004).

¹⁰⁴ *Greenery Rehab. Group, Inc. v. Hammon*, 150 F.3d 226 (2d Cir. 1998).

¹⁰⁵ *Greenery Rehab. Group, Inc. v. Hammon*, 150 F.3d 226 (2d Cir. 1998).

Access to Health Care for Immigrant Victims of Sexual Assault

furnish Social Security numbers.¹⁰⁶ Many states specify that no Social Security number is required. However, a California court did hold that the state Department of Health could require applicants to declare whether they are U.S. citizens or nationals, or immigrants with “satisfactory immigration status.”¹⁰⁷

The definition of “emergency medical condition,” as provided by Medicaid, may actually provide broad medical coverage for immigrant victims of sexual assault. Depending on the jurisdiction, some state statutes allow a large degree of latitude in determining what is an “emergency medical condition.” As the above case studies demonstrate, an injury is covered if it is “a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in”:

- (a) Placing the patient’s health in serious jeopardy;
- (b) Serious impairment to bodily functions; or
- (c) Serious dysfunction of any organ or part.¹⁰⁸

In order to qualify for coverage, the injury need only meet one of the enumerated categories provided in the definition. A well-reasoned argument could go a long way for a client who is a victim of sexual assault. It could mean screening for STDs and pregnancy, mental health counseling, and follow-up visits.

The Emergency Medical Treatment and Active Labor Law¹⁰⁹

The Emergency Medical Treatment and Active Labor Act (EMTALA)¹¹⁰ is also often referred to as the federal “antidumping” statute. This law protects persons without health insurance from being denied life-saving medical treatment. EMTALA applies to any hospital with an emergency room participating in Medicare. It requires that any time a person comes to the emergency room for help, the hospital makes a determination of whether that person has an emergency medical condition or is in active labor. If so, the hospital must provide treatment sufficient to stabilize the condition. In addition, the law requires that patients whose emergency medical condition has stabilized not be transferred without the written certification of the physician on duty that the medical benefits of transfer outweigh the increased health risks to the individual due to lack of availability of medical treatment. These protections can be very important for victims of sexual assault and domestic violence who have low-income, lack health insurance, or are immigrants who do not otherwise qualify for Medicaid-funded health care.

Other provisions of EMTALA require that hospitals have:

- Policies of nondiscrimination in the provision of specialized care;
- No delays in examination and treatment;
- No retaliation against physicians refusing to transfer a patient still undergoing an unstabilized emergency medical condition;
- Hospital policies ensuring compliance with the law; and
- Provide notice alerting individuals of --
 - Their rights to examination and treatment; and
 - Whether the hospital participates in Medicare.

EMTALA also provides for penalties including loss of the right to participate in Medicare, and fines up to \$50,000, against hospitals and doctors who do not comply with EMTALA’s requirements.

¹⁰⁶ U.S. Department of Health and Human Services, The Centers for Medicare and Medicaid Services, State Medicaid Manual § 3211.9 (1997).

¹⁰⁷ *Crispin v. Coye*, 27 Cal. App. 4th 700, 34 Cal Rptr. 2d 10 (1994).

¹⁰⁸ 42 U.S.C. § 1396b(v)(3)(A)-(C) (2004).

¹⁰⁹ Claudia Schlosberg, *Immigrant Access to Health Benefits: A Resource Manual* 19-20 (Doreena Wong ed., The Access Project and National Health Law Program 2002).

¹¹⁰ 42 U.S.C. §1395dd (2007).

Community Health Centers (Federally Funded Qualified Health Centers)

Pursuant to the Omnibus Budget Reconciliation Act of 1990 the federal government provides grants to Federally Qualified Health Centers¹¹¹ (FQHCs), otherwise known as Community Health Centers.

Community health centers and migrant health centers fill the gap for many sexual assault and domestic violence victims who cannot otherwise access health care services. Community health centers are local, non-profit, community-owned health care providers serving low income and medically underserved communities. The national network of health centers provides high-quality, affordable primary care and preventive services, and often provide on-site dental, pharmaceutical, mental health, and substance abuse services. More importantly, the FQHCs improve access to care for millions of Americans regardless of their insurance status or ability to pay. It is through community health centers that victims who do not qualify for Medicaid can receive health care.

To find a federally qualified community health center in your community go to the website of the Health Resources and Services Administration at the U.S. Department of Health and Human Services. <http://hrsa.gov/gethealthcare/index.html> Under “Find a Health Center” enter a zip code and the website will list the address, phone number and e-mail address for all of the federally qualified health centers near that zip code.

Approximately 20 million people are served by federally qualified community health centers nationwide each year.¹¹² That number continues to grow. The Patient Protection and Affordable Care Act of 2010¹¹³ will enable federally qualified community health centers to serve nearly 20 million additional patients by 2015.¹¹⁴ Approximately 50% of health center patients live in economically depressed inner city communities, and the other half resides in rural areas. Nearly 70% of health center patients have family incomes at or below poverty (\$15,206 annual income for a family of three in 2003).¹¹⁵ Moreover, almost 40% of health center patients are uninsured and another 36% depend on Medicaid, much higher than the national rates of 12% and 15%, respectively.¹¹⁶ Two-thirds of health center patients are members of racial and ethnic minorities.¹¹⁷ Health centers remove common barriers to care by serving communities who otherwise confront financial, geographic, language, cultural, and other barriers, making them different from most private, office-based physicians. The health centers are located in high-need areas, as identified by the federal government as having elevated poverty, higher than average infant mortality, and where few physicians practice. They are open to all residents, regardless of insurance or immigration status, and provide free or reduced cost care based on ability to pay. They tailor their services to fit the special needs and priorities of their communities, and provide services in a linguistically and culturally appropriate setting.

For many patients, the health center may be the only source of health care services available. In fact, the number of uninsured patients at health centers is rapidly growing. It is estimated that approximately 3.9 million were uninsured in 1998, compared to over 5.9 million today. FQHCs provide access to health services by underserved populations unable to pay for health services. Underserved populations include groups that face barriers to accessing health services because:

- They are unable to pay for them;
- Of language access for LEP individuals;
- Of cultural obstacles;

¹¹¹ Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508 § 4161 (1990). For more information on FQHCs, see Claudia Schlosberg, *Immigrant Access to Health Benefits: A Resource Manual* 19-20 (Doreena Wong ed., The Access Project and National Health Law Program 2002).

¹¹² Eli Y. Adashi, M.D., H. Jack Geiger, M.D., and Michael D. Fine, M.D., *Health Care Reform and Primary Care — The Growing Importance of the Community Health Center*, New England Journal of Medicine (April 28, 2010) available at <http://healthcarereform.nejm.org/?p=3377&query=home>

¹¹³ Public Law No: 111-148, March 23, 2010

¹¹⁴ Id.

¹¹⁵ Bureau of Primary Health Care, Uniform Data System (2003).

¹¹⁶ Bureau of Primary Health Care, Uniform Data System (2003).

¹¹⁷ Bureau of Primary Health Care, Uniform Data System (2003).

Access to Health Care for Immigrant Victims of Sexual Assault

- Undocumented immigration status; or
- The community lacks the resources to provide for them.

Such communities include undocumented immigrants, seasonal agricultural workers, the homeless, and public housing residents, among others. Health Centers who receive FQHC grants are open to all persons in the United States with no restrictions on immigration status. FQHC funded health centers must provide basic health services and services that help ensure access to basic health and social services.¹¹⁸ Such services include:¹¹⁹

- Primary care;
- Diagnostic, laboratory, and radiological services;
- Prenatal care;
- Post-assault health care;
- Cancer and other disease screening;
- Well child services;
- Immunizations against vaccine-preventable diseases;
- Screening for elevated blood lead levels, communicable diseases and cholesterol;
- Eye, ear and dental screenings for children;
- Family planning services;
- Preventive dental services;
- Emergency medical and dental services; and
- Pharmaceutical services.

The range of services provided to persons they serve include: case management; referrals; outreach, transportation, and interpretive services; health education; and help applying for Medicaid and other federal public benefits. For more information about Community Health Centers, visit the official National Association of Community Health Centers website at <http://www.nachc.com/>. To find a community health center in your area, visit <http://ask.hrsa.gov/pc/>.

VOCA and Post-Assault Health Care

Victims Of Crime Act (VOCA)

The Federal Victims of Crime Act established a Crime Victims Fund that provides grants to states for eligible crime victim compensation programs. If states meet certain requirements, this federal funding can be obtained to compensate victims of crimes through programs administrated by the states and U.S. territories.¹²⁰ A compensation program qualifies as eligible crime victim compensation program if:

1. The program is operated by the state and offers compensation to victims and the survivors of victims of criminal violence (including sexual assault, domestic violence, and trafficking) for:
 - a. (i) medical expenses attributed to a physical injury related to compensable crime, including expenses for mental health counseling;
 - b. (ii) lost wages attributable to a physical injury resulting from a compensable crime; and
 - c. (iii) funeral expenses attributable to a death resulting from a compensable crime;
2. The program promotes victim cooperation with reasonable requests from law enforcement;

¹¹⁸ OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE, *available at* <http://www.hhs.gov/ocr/immigration/bifsltr.html> (date revised Jan. 30, 2001).

¹¹⁹ HEALTH RESOURCES AND SERVICES ADMINISTRATION, U.S. DEP'T OF HEALTH AND HUMAN SERV., SUMMARY OF KEY HEALTH CENTER PROGRAM REQUIREMENTS *available at* <http://www.bphc.hrsa.gov/about/requirements.htm>

¹²⁰ See 42 U.S.C. §10602 (2000), and discussion of relevant federal law below.

Access to Health Care for Immigrant Victims of Sexual Assault

3. The grants will not supplant state funds otherwise available for victim compensation;
4. The program makes compensation awards to victims who are nonresidents of the state on the basis of the same criteria used to make awards to victims who are residents of the state;
5. The program provides compensation to victims of federal crimes occurring within the state on the same basis as compensation to victims of state crimes;
6. The program provides compensation to residents of the state who are victims of crimes occurring outside the state if:
 - a. (i) the crimes would be compensable crimes had they occurred inside that state; and
 - b. (ii) the places the crimes occurred in are states not having eligible crime victim compensation programs;
7. The program does not deny compensation to any victim because of that victim's familial relationship to the offender, or, because of the sharing of a residence by the victim and the offender. Funding may, however, be denied under program rules, if it would result in unjust enrichment of the offender; and
8. The program does not provide compensation to any person who has been convicted of an offense under federal law and during any time period that the convicted person is delinquent in paying a fine, other monetary penalty, or restitution imposed for the offense.

In general a "compensable crime" includes motor vehicle accidents resulting from driving while intoxicated, domestic violence, and any crime where the victim suffers death or personal injury, including assault, battery, child abuse, reckless driving, murder, robbery, sexual assault, kidnapping, or other violent crimes. Each state and territory has a victim's compensation program. Most of these programs provide compensation to victims of crimes that occur in that state. Generally a victim must suffer physical (bodily) injury, emotional injury, economic loss, or some combination of these.

Many of the programs extend certain types of compensation to relatives of the victim, such as counseling, or, where the crime results in a death, coverage of funeral and burial expenses. Often, relatives or even non-relatives that paid for medical care of a victim, can be compensated for those costs. Some states also extend benefits to those who prevent or attempt to prevent a crime.

Most states provide compensation to:

- State residents, or nonresidents, if the crime occurred in the state;¹²¹ and
- State residents, if the crime occurred in another state, and there is no comparable compensation available from that other state.

Several states also provide compensation to:

- State residents for crimes committed outside of the country, in an act of international terrorism, or mass violence.

Virtually all states¹²² provide access to VOCA funded services and VOCA crime victims funding to any immigrant without regard to immigration status (qualified immigrants, non-qualified immigrants, documented,

¹²¹ The non-resident coverage under VOCA can be very important for immigrant victims of sexual assault who may be having difficulty proving state residency for purposes of accessing emergency Medicaid payments for emergency health care.

¹²² Except Alabama and Nevada. See Al. Admin. Code § 262-X-4-.02(13), (14) (2007); N.R.S. § 217.210 (2007).

Access to Health Care for Immigrant Victims of Sexual Assault

undocumented) when the immigrant has been a crime victim in, or is a resident of, the state. Some states have application procedures that make it difficult for undocumented immigrant victims of sexual assault and domestic violence to access VOCA funded crime victim assistance. For example, several states ask for a social security number as part of the process of applying for VOCA victim compensation. However, often these states will process an application and provide compensation, even if the social security number is not available with an advocate's assistance. Among the very few states where compensation is not provided to non-qualified immigrants, one will permit compensation if the crime victim is also a victim of human trafficking.¹²³

To access VOCA funding, states generally require¹²⁴ that the crime be reported to law enforcement officials within a certain time period – often 72 hours. However, many states permit a crime to be reported later for good cause,¹²⁵ and some permit late reporting if the victim was a juvenile.¹²⁶ It is not necessary that the crime at issue be solved, prosecuted or that the accused is convicted. To receive VOCA funding, however, states generally require that the victim cooperate with law enforcement officials in investigating the crime, and that the victim be innocent, e.g., not involved in the crime, and not incarcerated at the time of the crime.

Compensation is available for a wide variety of financial costs. Most often this includes medical costs, such as physician services, hospital care, dental services, prescription drugs, and mental health treatment. For victims of sexual assault, compensated medical care can include STDs and HIV/AIDS screening/treatment, pregnancy testing, hepatitis screening, contraception, and pre-natal care.

Most states provide compensation for loss of income and funeral/burial costs. Many states also provide compensation for travel for court appearances or for medical treatment, rehabilitation, crime scene clean-up, necessary moving/relocation costs, necessary home security or modifications, limited attorneys fees, and replacement costs for the work the victim is no longer able to perform, e.g., housekeeping or child care. A few states compensate for lost, stolen, or damaged property. Very few states compensate for pain and suffering.

Most states have limits on how much will be reimbursed in each category, as well as a limit on total compensation. Most also consider this compensation of last resort, i.e., compensation will not be provided if the costs are reimbursable by insurance or other federal or state funded public benefits.

Emergency benefits can often be provided, if the victim would suffer substantial hardship without immediate compensation. Emergency awards generally range from \$500 to \$1500.

¹²³ Alabama and Nevada do not provide compensation to non-qualified immigrants. Al. Admin. Code § 262-X-4-.02(13), (14); N.R.S. § 217.210. However, Alabama Administrative Code states that claimants/victims who are certified by federal authorities as victims of human trafficking are eligible for compensation benefits regardless of immigration status. Al. Admin. Code § 262-X-4-.02(13), (14).

¹²⁴ Requirement of timely notification of the law enforcement or other agencies:
Alabama (72 hours), Alaska (5 days), Arizona (72 hours), Arkansas (72 hours), Colorado (72 hours), Connecticut (5 days), Delaware (72 hours), District of Columbia (7 days), Florida (72 hours), Georgia (72 hours), Hawaii (72 hours), Idaho (72 hours), Illinois (72 hours; but 7 days for sex crimes), Indiana (48 hours), Iowa (72 hours), Kansas (72 hours), Kentucky (48 hours), Louisiana (72 hours), Maine (5 days), Maryland (48 hours), Massachusetts (5 days), Michigan (48 hours), Minnesota (30 days) Mississippi (72 hours), Missouri (48 hours), Montana (72 hours), Nebraska (72 hours), Nevada (72 hours if victim wishes to qualify for coverage of initial emergency care; otherwise 5 days), New Hampshire (5 days), New Jersey (3 months), New Mexico (30 days; but 180 days for sexual assaults), New York (7 days), North Carolina (72 hours; but 7 days for sexual assaults), North Dakota (72 hours), Ohio (72 hours), Oklahoma (72 hours), Oregon (72 hours), Pennsylvania (72 hours), Rhode Island (10 days), South Carolina (48 hours), South Dakota (5 days), Tennessee (48 hours), Texas (should be reported within a reasonable period of time), Virginia (5 days), Washington (1 year), West Virginia (72 hours), Wisconsin (5 days), Wyoming (should be reported as soon as possible), Guam (should be reported "without undue delay"), Puerto Rico (4 days), and Virginia Island (24 hours).

¹²⁵ States that permit a crime to be reported later for good cause:
Alabama, Alaska (the incident must be reported within 5 days of the time when a report could have been reasonably made), Arizona, Arkansas, Connecticut (the crime should be reported within 5 days of the time when a report could have reasonably been made), Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Mississippi, Missouri, Montana, Nevada (5-day reporting period required unless there is an explanation as to why the victim was unable to notify authorities), New Hampshire (5-day reporting period required unless there is a reasonable explanation for not doing so), Oregon, Pennsylvania, South Carolina, South Dakota (the crime must have been reported within 5 days of the time it became reasonable to report), Tennessee, Virginia and West Virginia.

¹²⁶ States that permit a crime to be reported later if victim is minor:
Iowa, Maine, Missouri, New Mexico, North Dakota, Pennsylvania and Tennessee.

To obtain compensation, victims must generally file an application in the particular state that the crime occurred or that the victim resides. The application for VOCA funding will need to be filed with the agency that administers the program. Time limits for filing vary, but are generally one to three years from the time of the crime. There are usually allowances for good cause that enable an application to be submitted at a later time. Applications are then reviewed and a decision granting or denying benefits is issued. Most states have an appeal process that may be used if the victim's request is denied.

Medicaid and State Child Health Insurance Programs (SCHIP) Funding For Pre-Natal Care and Post-Assault Health Care

Only certain immigrants will qualify to access non-Emergency Medicaid. Medicaid is the largest public health insurance program in the country. It was created to provide health care to certain groups of low-income persons. The program is operated jointly by the federal government and by state governments. Basic requirements concerning eligibility, coverage, quality of care, and administration of funded programs are defined by the federal government.

PRWORA¹²⁷ provides that only “qualified immigrant”¹²⁸ permitted access to federal and state public benefits, including Medicaid.¹²⁹

“Qualified immigrants” eligible to receive Medicaid are:¹³⁰

- Legal permanent residents (including conditional permanent residents)¹³¹ (for the first 7 years in the United States);
- Refugees¹³² (for the first 7 years in the United States);
- Asylees¹³³ (for the first 7 years in the United States);
- Persons granted withholding of deportation¹³⁴ (for the first 7 years in the United States);
- Persons granted cancellation of removal;
- Cuban/Haitian entrants¹³⁵ (for the first 7 years in the United States);
- Victims of Trafficking¹³⁶ (for the first 7 years in the United States);
- Veterans of certain United States military actions;

¹²⁷ P.L. No. 104-193.

¹²⁸ The statute uses the term “qualified alien.”

¹²⁹ To access Medicaid, an immigrant must sign a declaration under penalty of perjury that the applicant has satisfactory immigration status, and must provide documentation. However, non-applicants living in the household or family unit do not have to provide their Social Security Numbers when their documented family member applies for Medicaid. To require non-applicants to provide this information violates the Privacy Act of 1974. *Policy Guidance Regarding Inquiries into Citizenship, Immigration Status, and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF) and Food Stamp Benefits*, September 21, 2000, at: www.hhs.gov/ocr/immigration/triagency.html. See also, Claudia Schlosberg, *Immigrant Access to Health Benefits: A Resource Manual* (Doreena Wong ed., The Access Project and National Health Law Program 2002).

¹³⁰ Section 431(b) and (c) of PRWORA, 8 U.S.C. § 1641(b) and (c) (2000).

¹³¹ Conditional permanent residents are spouses of U.S. citizens who at the time of obtaining resident status were married less than two years. Therefore, USCIS issues a “green card,” which expires two years after their residency interview, and the immigrant spouse must submit a second application to remove the conditions on her residence status 90 days before her card expires. For a full discussion of immigration options for battered immigrants with conditional residence status see Chapter 3 of this manual.

¹³² Admitted under § 207 of INA.

¹³³ Admitted under § 208 of INA.

¹³⁴ Either § 243(h) of the INA in effect prior to April 1, 1997, or § 241(b)(3) of INA.

¹³⁵ As defined in § 501(e) of the Refugee Education Assistance Act of 1980.

¹³⁶ Section 107(b)(1) of the Trafficking Victims Protection Act of 2000.

Access to Health Care for Immigrant Victims of Sexual Assault

- Person granted conditional entry;¹³⁷
- Amerasians¹³⁸ (for the first 5 years in the United States);
- Persons paroled into the United States for a year or more;¹³⁹
- Persons who have been battered or subject to extreme cruelty by a U.S. citizen or legal permanent resident spouse or parent, with pending or approved VAWA cases (self-petitions or cancellation of removal) or certain family-based immigrant petitions before DHS; and
- Persons whose children have been battered or subject to extreme cruelty by the U.S. citizen or legal permanent resident other parent, who have pending or approved VAWA cases (self-petitions or cancellation of removal) or certain family-based petitions before DHS.¹⁴⁰

Immigrants Who First Entered the U.S. After August 22, 1996 Are Subject To A Five (5) Year Bar On Access to Medicaid Unless Exempt

Immigrants who first entered the U.S. after August 22, 1996 must wait until 5 years after the date that they became a “qualified immigrant” to gain access to non-emergency Medicaid. The following is a list of the only post August 22, 1996 immigrants who may access Medicaid funded health care because they are exempt from the 5-year bar:

- Refugees;
- Asylees;
- Victims of Trafficking;
- Amerasians;
- Cuban/Haitian entrants;
- Veterans and immigrants on active military duty, their spouses (and unremarried surviving spouses), and their unmarried children under the age of 21 (includes Filipino, Hmong, and Highland Lao);
- Immigrants granted withholding of deportation; and
- Certain immigrants without sponsors.

Under PRWORA, immigrants who do not fall into the categories enumerated above, including undocumented immigrants, are considered “non-qualified aliens.” “Non-qualified aliens” can receive only limited federal and state public benefits. However, there are exceptions made on a state-by-state basis. Although PRWORA severely limited what public benefits a state can provide to non-qualified immigrants, PRWORA explicitly allows states to provide additional state funded benefits, if state laws were enacted after August 22, 1996 to affirmatively provide eligibility.

Federal law grants to state governments, the ability to determine which types of health care services will be covered under Medicaid as well as the categories of persons who will qualify to receive Medicaid funded health care in the state. As a result of this flexibility, Medicaid programs vary greatly from state to state. States can provide additional services under their Medicaid programs beyond the list of programs available

¹³⁷ Under § 203(a)(7) of INA in effect before April 1, 1980.

¹³⁸ Pub. L. No. 104-193 § 403, 110 Stat. 2265. An immigrant is eligible for benefits under Public Law 97-359 as the Amerasian child or son or daughter of a United States citizen if there is reason to believe that the immigrant was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after December 31, 1950, and before October 22, 1982, and was fathered by a United States citizen. Such an immigrant is eligible for classification under sections 201(b), 203(a)(1), or 203(a)(3) of INA as the Amerasian child or son or daughter of a United States citizen, pursuant to section 204(f) of INA. 8 C.F.R. § 204.4 (2007).

¹³⁹ Under § 212 of INA.

¹⁴⁰ Section 431(c) of PRWORA; VAWA self-petitioners must also prove that there is a substantial connection between the battery or extreme cruelty and the need for public benefit sought and that the battered immigrant or child no longer resides in the same household as the abuser. For more detailed information, see the Public Benefits Chapter of this Manual.

Access to Health Care for Immigrant Victims of Sexual Assault

through the federal Medicaid program. States can also choose to extend state funded medical assistance to individuals who may not qualify for Medicaid.¹⁴¹

When immigrant victims of sexual assault or domestic violence are Medicaid eligible, there are numerous forms of post-assault Medicaid covered health care they can receive including:

- hospital care;
- post-rape health care;
- maternal health care;
- pre-natal care;
- post-assault health care;
- nursing home care;
- physician services;
- laboratory and x-ray services;
- family planning services;
- health center and rural health center services;
- nurse midwife and nurse practitioner services; and
- Early Periodic Screening, Diagnosis and Treatment (EPSDT), a comprehensive children’s health benefit package.

For qualified immigrants who satisfy Medicaid and other state-specific eligibility requirements, a package of services that includes pre-natal care is generally available, including early risk assessment, health promotion and medical monitoring. For non-qualified immigrants, in many states, emergency medical care may be the only route for them to receive pre-natal care or services. But, while emergency medical services do include labor and delivery, “emergency services” generally do not include any non-emergency pre-natal services.

SCHIP

SCHIP is the State Children’s Health Insurance Program, which was enacted in 1997.¹⁴² The program provides funding to states for health insurance for uninsured, targeted low-income children. To qualify, children’s family incomes must be lower than state specified guidelines. Children must be under the age of 19, must not be eligible for Medicaid, and must not have other health insurance coverage. SCHIP provides coverage for all children born in the United States. Immigrant children are also eligible for SCHIP coverage if they are “qualified immigrants.” To determine whether an immigrant child is a “qualified immigrant” look to the discussion under Medicaid above.¹⁴³

Stories Illustrating The Importance Of Access to Emergency and Non-Emergency Health Care For Immigrant Victims of Sexual Assault

1. Rosa’s Story

Rosa came to the United States two years ago through her work. She works at her brother’s restaurant as a server. Rosa met Javier at the restaurant, and they began dating. After Javier and Rosa had been together for one month, Javier and Rosa were at Rosa’s apartment spending some time together. Javier had mentioned to Rosa that he didn’t like her spending more time with her friends than with him. The conversation quickly became heated. Javier made it clear that he did not want Rosa spending any time around any other men. Rosa tried explaining that she was just friends with these men. As the situation escalated, Javier moved closer and

¹⁴¹ California, Connecticut, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and the District of Columbia all cover the medically needy.

¹⁴² The Balanced Budget Act of 1997, Pub. L. No. 105-33.

¹⁴³ SCHIP authorization expired on Oct. 1, 2007, and was reauthorized by Congress. However, the legislation was vetoed by President G.W. Bush on Oct. 3, 2007. 153 Cong. Rec. H11203 (daily ed. Oct. 3, 2007).

closer to Rosa and he grabbed her arms. Rosa tried saying anything to neutralize the situation, but Javier had been drinking, so he was past the point of being reasonable. Suddenly, Javier pushed Rosa down on the sofa, and screamed, “You’re mine...AND NOT ANYONE ELSE’S!” Javier raped Rosa. Despite Rosa and Javier dating for a month, they had never had sex. At the hospital, Rosa was concerned that she may have contracted an STD or that she may become pregnant. Tests confirm that Javier gave Rosa Chlamydia.

Rosa’s Access To Emergency Medicaid and Forensic Testing

Rosa is an undocumented immigrant victim of sexual assault, requiring pregnancy and STD testing, and treatment as a result of her assault. Under Federal law’s definition of “emergency medical condition,” medical treatment and care must be provided to Rosa free of cost to treat her Chlamydia. Absent an immediate diagnosis and treatment, it can be reasonably expected that Rosa will suffer from serious impairment to bodily functions or serious organ dysfunction due to Chlamydia. Chlamydial organisms travel upward into the uterus, where they infect the endometrium.¹⁴⁴ When Chlamydia ascends further to the fallopian tubes and ovaries, it produces a condition known as pelvic inflammatory disease (PID).¹⁴⁵ PID has emerged as a major cause of infertility and ectopic pregnancy among women of childbearing age.¹⁴⁶ Should Rosa have become pregnant as a result of the rape, she may also pass the infection to her newborn during delivery.¹⁴⁷ A particular strain of Chlamydia causes an uncommon STD called lymphogranuloma venereum (LGV), which is characterized by swelling and inflammation of the lymph nodes in the groin. Other complications may follow if LGV is not treated at this stage.¹⁴⁸ Other species, Chlamydia pneumoniae and Chlamydia psittaci, cause pneumonia and pneumonitis.¹⁴⁹

Under Emergency Medicaid, Rosa’s pregnancy and STD tests (including HIV/AIDS) are covered as an “emergency medical condition,” because in the absence of such tests, Rosa may not receive proper treatment, which could affect her body, and ultimately her life and wellbeing. In order to treat STDs, a physician must administer the appropriate diagnostic test; therefore, diagnostic tests and subsequent treatment go hand-in-hand. Many STDs manifest with acute symptoms, and can cause irreparable bodily harm and damage. If not diagnosed and treated immediately, women may suffer infertility or complications during pregnancy, and other diseases and viruses may manifest. Rosa’s injuries and resulting Chlamydia can be treated under the definition of an “emergency medical condition.” To determine the steps that Rosa needs to take to get health coverage for her pregnancy and STD testing, refer to the “Emergency Medicaid for Non-Qualified Aliens” chart¹⁵⁰ and look up Rosa’s state. In addition, Rosa may benefit from looking up her state specific information in both the “Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence”¹⁵¹ chart and

¹⁴⁴ National Institute of Allergy and Infectious Diseases, National Institutes of Health, U.S. Department of Health and Human Services, *Health Matters: Chlamydia* (2006), available at <http://www.niaid.nih.gov/factsheets/stdclam.htm>.

¹⁴⁵ National Institute of Allergy and Infectious Diseases, National Institutes of Health, U.S. Department of Health and Human Services, *Health Matters: Chlamydia* (2006), available at <http://www.niaid.nih.gov/factsheets/stdclam.htm>.

¹⁴⁶ National Institute of Allergy and Infectious Diseases, National Institutes of Health, U.S. Department of Health and Human Services, *Health Matters: Chlamydia* (2006), available at <http://www.niaid.nih.gov/factsheets/stdclam.htm>.

¹⁴⁷ National Institute of Allergy and Infectious Diseases, National Institutes of Health, U.S. Department of Health and Human Services, *Health Matters: Chlamydia* (2006), available at <http://www.niaid.nih.gov/factsheets/stdclam.htm>.

¹⁴⁸ National Institute of Allergy and Infectious Diseases, National Institutes of Health, U.S. Department of Health and Human Services, *Health Matters: Chlamydia* (2006), available at <http://www.niaid.nih.gov/factsheets/stdclam.htm>.

¹⁴⁹ National Institute of Allergy and Infectious Diseases, National Institutes of Health, U.S. Department of Health and Human Services, *Health Matters: Chlamydia* (2006), available at <http://www.niaid.nih.gov/factsheets/stdclam.htm>.

¹⁵⁰ Available at: http://iwp.legalmomentum.org/public-benefits/health-care/17_Emergency-Medicaid-Chart-MANUAL-ES.doc/view

¹⁵¹ Available at: http://iwp.legalmomentum.org/public-benefits/health-care/17_Chart_PostAssaultHealthCare-MANUAL-ES.doc/view

the chart on “Coverage for Forensic Costs for Undocumented Immigrants.”¹⁵² These charts can help her to determine the medical costs for which she may be able to receive coverage or reimbursement.

2. *Surabhi’s Story*

Surabhi has lived in the United States for six years. At first it was difficult for her to adjust to living in the United States, because she missed her close friends back home in India, but her family told her that living in the United States was best for her because she would be able to receive a good education.

Recently, Surabhi decided to take one course at a local community college. Through school, she has met several new friends. Her friends invited her to a party at one of the off-campus fraternities. Surabhi was very excited to go to this party with her new friends, especially since she had been told that the “in” crowd always attends fraternity parties.

At the party, one of the fraternity members offered her a drink. Surabhi is not a big drinker, but she noticed that everyone else was drinking, so she took the drink. Twenty minutes later, she walked around the house trying to find a bathroom. She was not feeling so well. Unable to find a bathroom, she walked into a bedroom and sat down for a moment. As she sat down, four fraternity members came into the room laughing while they asked her how she was feeling. Shortly after, Surabhi passed out. The four fraternity members then gang-raped her.

Subsidized Health Care and Help for Surabhi

Emergency Medicaid

At the hospital, it was determined that Surabhi would need immediate surgery due to internal bleeding and other injuries caused by the brutal rape. Physicians believed that Surabhi had been drugged. To confirm this, they ran a test to see if any date rape drugs were present in her blood. Severely traumatized by the experience, Surabhi will require months of mental health counseling, as she is unable to cope with her brutal rape.

Surabhi’s surgery is covered as an “emergency medical condition,” because without the surgery she would die due to loss of blood and internal injuries to her organs. Her condition was acute enough that it necessitated emergency surgery.

Similar to Rosa’s story above, any tests for date rape drugs and STDs can be covered as an emergency medical condition. This is because those diagnostic tests are the first prong in establishing a course of medical care and treatment, if Surabhi has contracted any virus or disease. STDs such as Chlamydia, gonorrhea, and syphilis can cause irreparable bodily harm if they go undiagnosed and untreated.

Mental health counseling should also be covered as an emergency medical condition. Without it, Surabhi could develop depression and shut down physically, emotionally and mentally. The most common long-term effects of sexual assault and rape are the invisible ones. The immediate symptoms of rape trauma include having unpredictable and intense emotions. Victims may have (1) an exaggerated startle response (jumpy), (2) memories and intrusive thoughts about the assault, and (3) nightmares, difficulty sleeping, and difficulty concentrating.¹⁵³ The long-term psychological effects of rape can include: post-traumatic stress syndrome and rape trauma syndrome; obsessive compulsive disorder; eating disorders; self-injury; self-blame; panic attacks;

¹⁵² Available at: http://iwp.legalmomentum.org/public-benefits/health-care/Ch17_Charts_Forensic-Exams-MANUAL-ES.doc/view

¹⁵³ National Institute of Allergy and Infectious Diseases, National Institutes of Health, U.S. Department of Health and Human Services, *Health Matters: Chlamydia* (2006), available at <http://www.niaid.nih.gov/factsheets/stdclam.htm>

Access to Health Care for Immigrant Victims of Sexual Assault

flashbacks; body memories; and sleeping disorders.¹⁵⁴ The four major symptoms of Rape-related Post Traumatic Stress Disorder are:

- Re-experiencing the trauma (uncontrollable intrusive thoughts about the rape);
- Social withdrawal;
- Avoidance behaviors (a general tendency to avoid any thoughts, feelings, or cues); and
- Irritability, hostility, rage, and anger.¹⁵⁵

According to the National Women’s Study,

Nearly one-third of all rape victims develop rape trauma syndrome sometime during their lifetimes. Rape trauma syndrome is diagnosed by a mental health professional when the biological, psychological and social effects of trauma are severe enough to have impaired a survivor’s social and occupational functioning.¹⁵⁶

In many cases these effects can be life long if the victim does not get immediate support and care. Without immediate and consistent mental health counseling, Surabhi’s physical and mental wellbeing may be placed in serious jeopardy or that she may suffer further impairment. Thus, advocates and attorneys working with victims like Surabhi should review the state by state health care charts to determine whether your state could cover mental health treatment for rape victims under Emergency Medicaid and whether other options are available these options might include VOCA funded mental health care or mental health care offered through a local federally funded community health clinic or a non-profit victim services agency in your area.¹⁵⁷ The chart will also assist Surabhi in applying for coverage for her emergency medical conditions. In addition, Surabhi may find it helpful to consult both the “Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence” chart and the chart on “Coverage for Forensic Costs for Undocumented Immigrants.” These charts can help her to determine the medical costs for which she may be able to receive coverage or reimbursement.

3. Adjana’s Story

Adjana and her husband have enjoyed living in the United States for the past two years. Living in a neighborhood with several other Bosnian immigrants and friends, Adjana really feels a sense of comfort and community. Lately, Adjana’s husband has mentioned wanting to start a family. He says that he would like to hear little children running around their house and filling rooms with laughter. Adjana, on the other hand, would like to wait longer because she would like to save more money.

One night, Adjana and her husband were discussing having children. Her husband became very upset when Adjana said that she wanted to save more money because she didn’t think that they could support a baby right now. Her husband was instantly insulted. He felt that Adjana was saying that he was not capable of providing for his family. This wounded his pride. Adjana tried apologizing, but her husband truly believed that she meant to insult him. She tried physically distancing herself from her husband, but before she could, he grabbed her and threw her down a flight of stairs. She could not move and tearfully pleaded with him to leave her alone, but he only responded, “Maybe tonight we should start a family.” Her husband then raped her.

Adjana suffered from a broken leg, fractured hand and a concussion. At the hospital, a physician immediately set her leg and fitted a device on her hand that would hold the bones in place while they healed.

¹⁵⁴ National Institute of Allergy and Infectious Diseases, National Institutes of Health, U.S. Department of Health and Human Services, *Health Matters: Chlamydia* (2006), available at <http://www.niaid.nih.gov/factsheets/stdclam.htm>

¹⁵⁵ The National Center for Victims of Crime. *Sexual Assault*, available at [http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=\(September 2006\)](http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=(September 2006)).

¹⁵⁶ National Institute of Allergy and Infectious Diseases, National Institutes of Health, U.S. Department of Health and Human Services, *Health Matters: Chlamydia* (2006), available at <http://www.niaid.nih.gov/factsheets/stdclam.htm>

¹⁵⁷ For more information see the Public Benefits Chapter in this Manual.

Access to Health Care for Immigrant Victims of Sexual Assault

The physician told her that she also needed to go to physical therapy for her leg and hand two times per week for eight weeks in order to gain full mobility, dexterity and balance. Without physical therapy and follow up treatment, Adjana would experience physical deficit for the rest of her life.

Adjana's emergency room visit is covered as an emergency medical condition, because her leg, hand, and concussion caused her acute pain and suffering. Without treatment, her symptoms and injuries would not improve. Likewise, Adjana's 24-hour stay at the hospital for concussion observation is covered, because she could have suffered complications such as memory loss, seizure, or aneurysm without observation and treatment.

It can also be reasonably argued that physical therapy for Adjana is covered under Medicaid's definition of "emergency medical condition" because her acute and severe injuries are a direct result from being raped. Without physical therapy, she cannot achieve a full recovery. If Adjana doesn't receive physical therapy then her muscles may dystrophy and her leg and hand may be permanently disabled or irreparably harmed.

The chart "Emergency Medicaid for Non-Qualified Aliens"¹⁵⁸ may assist Adjarena to determine what medical expenses may be covered as emergency medical conditions, including her injuries and pregnancy testing if that is something in which she is interested. Additionally, she may find helpful state-specific information in the two charts entitled "Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence chart, and "Coverage for Forensic Costs for Undocumented Immigrants". Like for Rosa and Surabhi, these charts can help her to determine the medical costs for which she may be able to receive coverage or reimbursement.

¹⁵⁸ Available at http://iwp.legalmomentum.org/public-benefits/health-care/17_Emergency-Medicaid-Chart-MANUAL-ES.doc/view

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap