For What Public Benefits Do Undocumented Domestic Violence Victims Qualify?

In 1996, Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Act or PRWORA)\(^2\) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)\(^3\) severely limited access to “federal public benefits” and “federal means-tested public benefits” for many immigrants. This legislation also guaranteed as a matter of federal law and orders issued by the U.S. Attorney General that undocumented immigrants be provided access to programs and services necessary to “protect life and safety.” \(^4\)

Programs that meet the following criteria are required by federal law to provide services to all persons without regard to immigration status: \(^5\)

- offer in-kind services (services such as food, shelter, and other commodities);
- provide services at the community level;
- provide services regardless of the individual’s income or resources; and
- are necessary to protect life or safety

**Housing**\(^6\)

- Short-term shelter (defined as emergency shelter and transitional housing) for up to two years for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children\(^7\)

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• In-kind emergency disaster relief§

Nutrition Assistance§
• Soup kitchens10
• Community food banks11
• Senior nutrition programs and other nutritional programs for persons requiring special assistance
• Assistance under the National School Lunch Act, the Child Nutrition Act of 1966, or SNAP for children under 1812
• Special Supplemental Nutrition Program for Women, Infants and Children (WIC)13

Legal Services
• Organizations may use any source of funding including Legal Services Corporation funds to provide free legal services to victims (or immigrants whose child has been a victim) of domestic violence, child abuse, elder abuse, sexual assault, human trafficking and victims of U Visa crimes14 without regard to the victim’s immigration status.15

Health Care
• Emergency Medicaid16
• To protect life or safety, health services such as the following are required by law for all immigrants, regardless of status:17
  o Mental health, crisis counseling, and intervention programs
  o Medical and public health services (including treatment and prevention of diseases and injuries, such as immunizations)
  o Substance abuse assistance
• Health Resources and Services Administration Programs (HRSA) funded community, migrant and primary healthcare programs18
• Public health assistance for immunization, testing and treatment of communicable diseases and school vaccinations19

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13 7 C.F.R. § 246.7(c)(3)
14 U Visa crimes include: rape; torture; trafficking; incest; domestic violence; sexual assault; stalking; prostitution; female genital mutilation; involuntary servitude; slave trade; being held hostage; kidnapping, abduction; peonage, false imprisonment; blackmail; extortion; manslaughter; murder; felony assault; witness tampering; obstruction of justice; perjury, attempt, solicitation, or conspiracy to commit any of these or similar crimes. 8 U.S.C. § 1101(a)(15)(U), 214.14(a)(9) (2008).
16 Emergency Medicaid is exempt from immigrant restrictions under PRWORA § 401(b)(1), 8 U.S.C. § 1611(b)(1).
18 For the location of HHS funded health care programs open to all persons without regard to immigration status, see Find a Health Center, U.S. DEPT OF HEALTH AND HUMAN SERVS. HEALTH RES. AND SERVICES ADMIN., http://findahealthcenter.hrsa.gov/Search_HCC.aspx (last visited Mar. 27, 2013).
19 Immunization and treatment of communicable diseases is exempt from immigrant restrictions. PRWORA § 401(b)(3), 8 U.S.C. § 1611(b)(1)(C) (2011). This includes diseases such as tuberculosis, HIV, leprosy, and other sexually transmitted diseases.
For What Additional Public Benefits Do Domestic Violence Victims Who are Lawfully Present Qualify?24

There are four different categories of immigrants who qualify to receive federal and/or state public benefits.

• **Persons Residing Under Cover of Law (PRUCOL)**
  - Can access certain state funded benefits in some states

• **Immigrants who are lawfully present**
  - For health care access purposes of the Patient Protection and Affordable Care Act of 2009 including access to health care for children and pregnant women25
  - “Qualified immigrants”26 who entered the country before August 22, 1996 can access
    - Federal public benefits, 27

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26 Only two states place immigrant restrictions on access to VOCA victim assistance (Alabama and Nevada), in both states trafficking victims with ORR certification or eligibility letters or T-visas should be able to receive VOCA victim assistance to the same extent as refugees. For state by state details on access to VOCA assistance for immigrant survivors, see Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence, NIWAP, Legal Momentum, & Morgan Lewis LLC (Sep. 17, 2007), available at http://niwaplibrary.wcl.american.edu/public-benefits/health-care/17_Chart_PostAssaultHealthCare-MANUAL-ES.doc (last visited Apr. 10, 2013).


28 If undocumented parents have children who are U.S. citizens, lawful permanent residents or qualified immigrants, Child Care Development Fund child care is available to such children without regard to the immigrant parent’s immigration status. See U.S. DEP’T OF HEALTH AND HUMAN SERVS., ADMIN. FOR CHILDREN AND FAMILIES; CHILD CARE BUREAU, Clarification of Interpretation of "Federal Public Benefit" Regarding CCDF Services Program Instruction (ACYF-PI-CC-98-08) (Nov. 25, 1998), available at http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/Clarification%20of%20Federal%20Public%20Benefit%20Regarding%20Child%20Care%20and%20Development%20Fund%20Services.pdf/view (last visited April 11, 2013).


30 Only two states place immigrant restrictions on access to VOCA victim assistance (Alabama and Nevada), in both states trafficking victims with ORR certification or eligibility letters or T-visas should be able to receive VOCA victim assistance to the same extent as refugees. For state by state details on access to VOCA assistance for immigrant survivors, see Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence, NIWAP, Legal Momentum, & Morgan Lewis LLC (Sep. 17, 2007), available at http://niwaplibrary.wcl.american.edu/public-benefits/health-care/17_Chart_PostAssaultHealthCare-MANUAL-ES.doc (last visited Apr. 10, 2013).


32 A qualified immigrant is defined by 8 U.S.C. 1641 to include: lawful permanent residents, asylees, refugees, persons paroled for more than one year (generally most available to Cuban immigrants); persons granted withholding of removal or conditional entry, Cuban and Haitian Entrants, VAWA self-petitioners, VAWA cancellation of removal, VAWA suspension of deportation, battered immigrants with prima facie determinations or approved family based visa petitions, and T-visa applicants.

33 8 U.S.C. § 1611(c)(1) (2011) defines federal public benefit as Any grant, contract, loan, professional or commercial license provided by an agency of the United States or by appropriated funds of the United States; and any retirement, welfare,
- State public benefits, and
- Federal means-tested public benefits

- “Qualified immigrants” who entered the country on or after August 22, 1996 can access
  - Federal public benefits,
  - Must wait until 5 years after receipt of “qualified immigrant” status to receive federal means-tested public benefits, and
  - May qualify for state public benefits

VAWA immigration relief applicants with a prima facie determinations or approval and their children are “qualified immigrants” and may also qualify for health care or state benefits as lawfully present and PRUCOL. The following is a partial list of benefits available for “qualified immigrants”:

**Income Maintenance**

- TANF - limited to qualified immigrants who entered before 8/22/1996 and others who have been qualified immigrants for more than 5 years
- SSI for those who were lawful permanent residents and were receiving SSI on August 22, 1996 or if the immigrant, her spouse, or a parent had, individually or collectively, worked for 40 quarters

**Housing**

- Housing Choice Voucher Program (Section 8)
- Public Housing
- Heating assistance (LIHEAP)

**Nutrition Assistance**

- SNAP (Food Stamps) - limited to qualified immigrants who entered before 8/22/1996 and others who have been qualified immigrants for more than 5 years

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28 Includes child and spouse abuse victim VAWA self-petitioners (victims of spouse or child abuse perpetrated by a U.S. citizen or lawful permanent resident spouse, former spouse, parent or step-parent) INA §§ 204(a)(1)(A)(iii) and (B)(ii), 8 U.S.C. §§ 1154(a)(1)(A)(iii) and (B)(ii); and VAWA cancellation of removal or VAWA suspension of deportation applicants who are victims of spouse or child abuse perpetrated by a U.S. citizen or lawful permanent resident spouse, former spouse, parent or step-parent or immigrant parents of children abused by the child’s other parent who is a citizen or lawful permanent resident. INA § 240A(b)(2); 8 U.S.C. § 1229b(b)(2) and INA Section 244(a)(3) (as in effect prior to March 31, 1997).


Benefit and state funded access to TANF funded child care, see Benefish Anver and Leslye E. Orloff, Immigrant Crime Victim Child
Qualified Aliens” as provided for in the Violence Against Women Act
Interpretation of PRWORA “Federal Public Benefit”, 63 Fed. Reg. 41,658 (Aug. 4, 1998); HHS Funded Programs Open to all
immigrants/Verification%20of%20Citizenship%20and%20Immigration%20
2008)- Eligibility for Title IV Aid for “Battered Immigrants
Dear%20Colleague%20Letters.pdf/view?searchterm=Student%20Aid%20Eligibility
CHIP, 7.1.10.pdf/view?searchterm=Re:%20Medicaid%20and
CHIP%20Coverage%20of%20Lawfully%20Residing%20Children%20and%20Pregnant%20Women (last visited Apr. 11, 2013); Dep’t of Health and Human Svcs., State Children’s Health Insurance Program;
Eligibility for Prenatal Care and Other Health Services for Unborn Children, 67 Fed. Reg. 61956-01 (October 2, 2002).

For a full list of HHS federal public benefits, see Dep’t of Health and Human Svcs., Health and Human Service Interpretation of PRWORA “Federal Public Benefit”, 63 Fed. Reg. 41,658 (Aug. 4, 1998); HHS Funded Programs Open to all Immigrants, NIWAP and Legal Momentum (Aug. 4, 2011), available at

See CTR. FOR MEDIACID, CHIP, AND SURVEY & CERTIFICATION, Re: Medicaid and CHIP Coverage of “Lawfully Residing” Children and Pregnant Women (Jul. 1, 2010), available at
Eligibility for Prenatal Care and Other Health Services for Unborn Children, 67 Fed. Reg. 61956-01 (October 2, 2002).

8 U.S.C. § 1613(c)(2)(H) (2011). See also Student Aid Eligibility - Eligibility for Title IV Aid for “Battered Immigrants- Qualified Aliens” as provided for in the Violence Against Women Act, Dep’t of Educ. (June 4, 2010), available at

Available to qualified immigrants based on TANF eligibility of either the child or parent. For a state by state analysis of state funded access to access to TANF funded child care, see Benish Anver and Leslie E. Orloff, Immigrant Crime Victim Child Care Access available at http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-services-by-immigration-relief-for-immigrant-crime-victims/CHILDCARECHART-FINAL%204.17.13.docx/view

State-Funded Benefits

While access to federal means-tested public benefits may be restricted based on immigration status and/or other limitations, states may enact state laws that extend or limit access to state funded public benefits to various categories of immigrants. Many states (39) offer some form of state funded public benefits to immigrants that provide access to state publicly funded assistance that provides assistance that goes beyond what immigrants are eligible for under federal public benefits programs. The state funded benefits most commonly extended to immigrants are access to state funded prenatal care, health care for children through CHIP and/or access to state funded medical assistance. A smaller number of states extend access to state funded TANF to some groups of immigrants. Conversely, some states (8) have passed laws that limit the ability of immigrants to access federally funded public benefits for immigrants living in those states.

As a result, which state or federally funded public benefits an immigrant qualifies for varies by state, by public benefits program, by when the immigrant first entered the United States, by what form of immigration relief, if any, and the immigrant may have or may have filed for. Additionally, with regard to some public benefits programs immigrant crime victims will have more access to state or federally funded public benefits than other immigrants in their state.

NIWAP has created an on-line public benefits map that can be used to identify which immigrants qualify for which benefits programs in each state.

The benefits map details eligibility information based on the benefit sought, immigration status, and state in which the immigrant who may need benefits lives. The on-line public benefits map is organized by type of benefit and by state. Users can look up whether and which types of state or federally funded benefits or services the immigrant they are working with qualifies for in their states. If the on-line benefits map will state for each benefits program which categories of immigrants are eligible, eligible with conditions or are not eligible for that benefits program in the state.

When the on line map indicates that an immigrant may be eligible or eligible with conditions for a state or federally funded benefit or service in a state, the on-line map provides a link to a full public benefits chart for the state. The public benefits chart will connect users to more detailed information about benefits access for immigrants in the state and contains endnotes that cite and provide links to the controlling state and federal statutes, regulations, policies and websites that govern the public benefits in each state. The charts serve as an extensive and detailed resource, for practitioners, advocates and survivors to make determinations as to what benefits are available to them.