

## PROGRAMS OPEN TO IMMIGRANT VICTIMS AND ALL IMMIGRANTS WITHOUT REGARD TO IMMIGRATION STATUS<sup>1</sup>

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In passing the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA) that generally restricted immigrant access to public benefits,<sup>2</sup> Congress explicitly exempted certain programs from PRWORA's immigrant access restrictions in order to ensure that programs that protected life, safety and public health remained open to all individuals without regard to their immigration status.<sup>3</sup> As a matter of federal law, all of the programs listed in this brochure are open to all persons, including undocumented immigrants, and access to these programs cannot be restricted by service providers or by state or local governments.<sup>4</sup>

### Widely Available Public Services

The Department of Justice (DOJ) has confirmed that the following programs are widely available public services that are open to all persons without any immigration status based restrictions.<sup>5</sup> These programs include *but are not limited to*:

- Police

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<sup>2</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub.L. 104-193, 110 Stat. 2105 (codified at 8 U.S.C.A. § 1611).

<sup>3</sup> PRWORA, Pub.L. 104-193, 110 Stat. 2105, Title IV, Sec. 411(b) (codified at 8 U.S.C.A. § 1621(b)).

<sup>4</sup> Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3613, 3615. (Hereinafter "Life and Safety Regulation")

<sup>5</sup> Id. at 3616.

- Fire
- Ambulance
- Transportation
- Sanitation, and
- Other regular widely available services (e.g. access to courts)

### Programs Necessary to Protect Life and Safety

In addition to exempting the above programs, PRWORA also granted the U.S. Attorney General the authority to exempt certain programs from any restrictions on immigrant access to services and benefits, regardless of whether the programs offering these services are state, locally, privately or federally funded.<sup>6</sup> PRWORA requires that any program that meets the following criteria is to be open to all persons without regard to immigration status.<sup>7</sup> The program must:

- 1) Deliver in-kind services<sup>8</sup> at the community level;
- 2) Not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and
- 3) Be necessary for the protection of life or safety.

In PRWORA, Congress delegated to the Attorney General of the United States the exclusive and complete authority to define the types of services that are necessary to protect

<sup>6</sup> *Id.*

<sup>7</sup> PRWORA, Pub.L. 104-193, 110 Stat. 2105, Title IV, Sec. 411(b)(4) (codified at 8 U.S.C.A. § 1621(b)(4)).

<sup>8</sup> "In-kind" services are those that involve the provision of goods or services, not cash payments, to persons. These services could include food, clothing, shelter, legal assistance, counseling, protection orders and victim services.

life and safety.<sup>9</sup> The DOJ regulations describe federal preemption on these issues<sup>10</sup> as follows:

"(2) The Attorney General has fully exercised the power delegated to her under §§ 401(b)(1)(D) and 411(b)(4) of the Welfare Reform Act (codified at 8 U.S.C. 1611(b)(1)(D) and 1621(b)(4)).

(3) Neither states nor other service providers may use [PRWORA] as a basis for prohibiting access of aliens to any programs, services, or assistance covered by this Order. Unless an alien fails to meet eligibility requirements provided by applicable law other than [PRWORA], benefit providers may not restrict the access of any alien to the services covered by this Order, including, but not limited to, emergency shelters.

(4) Thus ...benefits providers who satisfy the requirement of this Order are not require to verify citizenship, nationality, or immigration status of applicants seeking benefits."

The following is a list of the types of programs that the Attorney General deems to be necessary to protect life and safety. Those programs include *but are not limited to*:<sup>11</sup>

- **Crisis counseling and intervention programs.** Includes domestic violence, rape crisis, mental health counseling and treatment for domestic abuse and sexual assault survivors and child and elder abuse survivors.
- **Services and assistance relating to child protection.** Includes services to child abuse, incest and sexual assault victims.
- **Adult protective services.** Includes services to elder abuse victims, elder victims of human trafficking, and elder victims of crime. Elder abuse victims include

<sup>9</sup> Life and Safety Regulations at 3615.

<sup>10</sup> For additional information on the issue of preemption regarding life and safety related programs, see Rocio Molina, Leslye Orloff and Benish Anver *Federal Preemption of State Law That Attempt to Restrict Immigrant Access to Services Necessary to Protect Life and Safety*, (February 15, 2013) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits/Federal-Preemption-Life-and-Safety.pdf/view>

<sup>11</sup> Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3613.

victims of physical, sexual, and psychological abuse, neglect, abandonment, financial exploitation by another person or entity, and/or stalking.

- **Violence and abuse prevention.** Includes domestic violence, sexual assault, child abuse, incest, elder abuse, trafficking and crime victim related outreach, education and prevention activities.
- **Services to victims of domestic violence or other criminal activity.** Includes the full range of services, assistance and treatment for victims of domestic violence, sexual assault, incest, child and elder abuse, trafficking and crime victim services. This includes full access to protections offered by state and federal courts in civil, criminal, family and protection order matters.
- **Treatment of mental illness or substance abuse.** Immigrant victims of domestic violence, sexual assault, incest, trafficking and family violence can access mental health treatment programs that are necessary to protect life and safety.
- **Programs to help individuals during periods of adverse weather conditions.** Earthquakes, tornados, hurricanes, floods, wildfires, heat, dam failures, landslides, nuclear power plant emergencies, thunderstorms, tsunamis, volcanoes, and winter storms.
- **Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused or abandoned children.** U.S. Department of Housing and Urban Development defines short term shelter or housing assistance to include emergency shelter and transitional housing of up to two years duration. Victims of sexual assault may qualify for emergency shelter and transitional housing as child abuse, elder abuse or domestic violence victims or because they are homeless.
- **Soup kitchens and community food banks.** Soup kitchens are defined as established feeding operations that provide food for the needy homeless. Food banks are public or charitable institutions that provide food or edible commodities to food pantries, soup kitchens, hunger relief centers, or other food center that provide food to needy persons.
- **Senior nutrition programs and other nutritional programs for persons requiring special assistance.** Examples include the Women Infants Children Program, public education and school meals program, summer

meals and medical assistance for AIDS patients.

- **Medical and public health services and mental health disability or substance abuse assistance necessary to protect life and safety.**

This provision assures access to Emergency Medicaid and other services for the treatment and prevention of diseases and injuries.

- **Activities designed to protect the life and safety of workers, children and youths or community residents.** Includes police, fire department, emergency medical personnel, and access to courts and to federal and state agencies responsible for enforcing labor laws. In the health care context, services include immunizations for children and adolescents, AIDS and HIV services and treatment, tuberculosis services and treatment for sexually transmitted diseases.

### Legal Services

Immigrant victims of domestic violence, child abuse, elder abuse, sexual assault, stalking, human trafficking and any U visa crime who are income eligible for legal assistance are legally eligible to receive legal assistance from any Legal Services Corporation (LSC) funded agencies without regard to the victim's immigration status.<sup>12</sup> Representation is available for all matters related to escaping, ameliorating the effects of, preventing or obtaining relief from the abuse suffered.

### Health Care

In addition to these programs, immigrants are also entitled health care access from Community and Migrant Health Centers regardless of their immigration status.<sup>13</sup> Community health centers are local, non-profit,

community-owned health care providers serving low income and medically underserved communities. Health Centers that receive Federally Qualified Health Center funding are required to provide basic health services. Such services include:

- **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.**

To find a community health center, interested individuals should go to <http://bphc.hrsa.gov/>. The following screen will appear:



At that website, enter a zip code in the box noted in the picture. Then, the website will give a list of community health centers in that area.

<sup>12</sup> Restrictions on Legal Assistance to Aliens, 79 Fed. Reg. 21861 (Apr. 18, 2014) (to be codified at 45 C.F.R. pt. 1626).

<sup>13</sup> Omnibus Budget Reconciliation Act of 1990, Pub.L. 101-508, 104 Stat. 1388.