



The administration's new public charge rule

States can help clients navigate the changes

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The Trump administration's rule change around public charge policies has raised many questions about how public assistance will be used to determine whether an immigrant may be admitted to the United States (U.S.) or granted Lawful Permanent Resident status (LPR) (i.e., a "green card"). State health and human services agencies can play a key role in helping clients to understand these changes.

The rule, which went into effect February 24, 2020, broadens the number of public assistance programs that the federal government will consider to determine if a person is a "public charge"—that is, someone who is deemed to be financially dependent on the government. The rule now includes previously excluded health, nutrition, and housing programs, such as Medicaid, the Children's Health Insurance Program (CHIP), and the Supplemental Nutritional Assistance Program (SNAP).

Immigration advocates say that hundreds of thousands of immigrants may not seek the aid to which they are entitled out of fear of being deported or denied entry to the U.S.¹ However, the rule offers a number of exceptions and gives officials significant discretion in determining public charge status on a case-by-case basis.² For example, those who already have permanent resident status who are seeking to become naturalized U.S. citizens will likely not be affected by the policy change. Also, the rule won't apply to family members of U.S. citizens who receive benefits.

The following is a detailed review of the administration's new rule and an examination of its broader implications for state agencies and their interactions with immigrants seeking to participate in public benefit programs.

Public charge: A long-standing U.S. policy

The U.S. has had a long-standing policy of denying entry or green cards to individuals who officials determine are likely to become public charges. As detailed under Section 212(a)(4) of the Immigration and Nationality Act (INA) (1965), immigrants seeking LPR status may not "at any time" be considered a public charge or else "admission to the United States or adjustment of status" will not be granted.³

¹ "Trump officials move to deny green cards, path to citizenship for poor immigrants," The Washington Post. August 12, 2019.

² Estimated Impacts of Final Public Charge Inadmissibility Rule on Immigrants and Medicaid Coverage." The Henry J. Kaiser Family Foundation. September 2019.

³ <https://www.uscis.gov/greencard/public-charge>

The rule further outlines various factors which a consular or attorney general would consider in determining whether an immigrant was a public charge or not. These factors included age, health, family status, assets, resources, financial status, education, and skills.⁴ However, the rule did not provide specific details. Then, in 1999, the Immigration and Naturalization Service (INS) released the Field Guidance on Deportability and Inadmissibility on Public Charge Grounds. **This document defined a public charge as any “alien who has become... or who is likely to become ‘primarily dependent on the government for subsistence.’”**⁵

Since the Clinton administration, the primary indicator for whether a person would become a public charge became the “receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense.” This meant the following benefits could be considered for public charge purposes: Supplemental Security Income (SSI), Temporary Assistance for Needed Families (TANF), state and local cash assistance programs, and public assistance for long-term care in an institution⁶. However, other noncash benefits, such as Medicaid, or cash benefits “for purposes other than for income maintenance,” such as SNAP, weren’t weighted against an immigrant applying for long-term resident status.

The Trump administration proposed a series of changes to the country’s public charge policies. After an extensive public comment period, the changes were to be implemented on October 15, 2019. However, shortly before the scheduled date, judges in Washington, California, Illinois, Maryland and New York temporarily blocked the rule from going into effect. Judges argued the rule “violated the Constitution, the Administrative Procedures Act, and the immigration laws themselves”⁷. Eventually, the various Circuit Courts stayed California, Washington, and Maryland’s challenges, but the universal injunction issued by New York and Illinois remained. Finally, on January 27, 2020, the U.S. Supreme Court issued a 5-4 ruling to grant a stay on the New York ruling,⁸ allowing the government to pursue (for now) its policy everywhere save Illinois.⁸ On February 21, 2020, the U.S. Supreme Court voted 5-4 to allow the government to enforce the rule nationwide, including in Illinois. Neil Gorsuch wrote the concurring opinion arguing the inappropriateness of nationwide injunctions by lower courts as a factor in this ruling.⁹ The U.S. Citizenship and Immigration Services (USCIS) implemented the final rule beginning February 24, 2020.

Summary of rule changes

As of February 24, 2020, the Department of Homeland Security (DHS) will tighten the definition of public charge by expanding the list of public-assistance benefits and quantifying the amount of time on such benefit before an immigrant can be considered a public charge. The rule also defines a list of positive and negative factors which could also be used when determining if an immigrant can receive LPR status.

Along with the public assistance benefits that have been used in public charge determinations described in the previous section, officials will now also consider:

- The receipt of **Supplemental Nutritional Assistance Program (SNAP) benefits**¹⁰

Public benefit programs that count toward public charge determination

- Supplemental Security Income (SSI)
- Temporary Aid to Needy Families (TANF)
- General assistance programs
- Supplemental Nutrition Assistance Program (SNAP)
- Section 8 rental and housing assistance programs
- Medicaid (except for benefits for children, pregnant and postpartum women, and individuals receiving emergency or school-based health-care services)

⁴ <https://www.law.cornell.edu/uscode/text/8/1182>

⁵ <https://www.govinfo.gov/content/pkg/FR-1999-05-26/pdf/99-13202.pdf>

⁶ <https://www.kff.org/disparities-policy/fact-sheet/public-charge-policies-for-immigrants-implications-for-health-coverage/>

⁷ <https://edition.cnn.com/2020/01/27/politics/read-public-charge-order-supreme-court/index.html>

⁸ Ibid

⁹ <https://www.scotusblog.com/2020/02/justices-grant-governments-stay-request-on-public-charge-rule-for-illinois/>

¹⁰ 8 CFR 212.21(b)(2)

- Various **housing assistance programs**, including both the Section 8 Housing Assistance under the Housing Choice Voucher Program¹¹ and Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation).¹² This change also affects immigrants living in public housing under Section 9.¹³
- The receipt of **Medicaid**. However, benefits received by “an alien under 21 years of age” or by a “woman during pregnancy (and during the 60-day period beginning on the last day of the pregnancy)” are exempt.¹⁴ The list of exempt Medicaid benefits also includes “school-based services or benefits provided to individuals who are at or below the oldest age eligible for secondary education as determined under State or local law,”¹⁵ “benefits received for an emergency medical condition,”¹⁶ and “services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act (IDEA).”¹⁷
- **Aggregate time receiving public benefits**. Officials will consider an immigrant a public charge if they receive any of the described benefits for more than 12 aggregate months within any 36-month period. If an individual receives multiple benefits in the same month, each benefit will count as a separate month. This means the “receipt of two benefits in one month counts as two months.”¹⁸ Due to categorical eligibility rules, eligibility for one program often means clients are automatically eligible for another program, such as the case for TANF and SNAP. Counting each program’s eligibility as a separate month will cause clients to reach the 12-aggregate-month threshold in less than a year in many instances.

¹¹ 8 CFR 212.21(b)(3)

¹² 8 CFR 212.21(b)(4)

¹³ 8 CFR 212.21(b)(6)

¹⁴ 8 CFR 212.21(b)(5)(iv)

¹⁵ 8 CFR 212.21(b)(5)(iii)

¹⁶ 8 CFR 212.21(b)(5)(i)

¹⁷ 8 CFR 212.21(b)(5)(ii)

¹⁸ 8 CFR 212.21(a)



Minimum factors to be considered

The administration's rule also includes a broadened definition of the minimum factors, aside from the receipt of public benefits, that officials can consider in determining the likelihood of an immigrant becoming a public charge:

- **Age:** The rule change clarified that ages between "18 and the minimum early retirement age for Social Security" will weigh positively.¹⁹
- **Health:** DHS will negatively weigh any health conditions that will make the individual more likely to become a public charge such as "a medical condition that is likely to require extensive medical treatment or institutionalization" or interfere with one's "ability to provide and care for himself or herself, to attend school, or to work upon admission or adjustment of status."²⁰
- **Family status:** DHS will evaluate items such as an immigrant's household size and if the "household size makes the immigrant more likely than not to become a public charge" in the future.²¹
- **Assets, resources, and family status:** DHS set a minimum income level for those seeking LPR status. For individual's not serving in the active military, the person's household's annual gross income must be at least 125 percent of the most recent Federal Poverty Guideline.²²
 - *Active duty military*
For those on "active duty, other than training, in the U.S. Armed Forces," the minimum is set to 100 percent of the most recent Federal Poverty Guidelines.²³ If the income does not meet the minimum, the individual may "submit evidence of ownership of significant assets," such as stocks, savings, or bonds.²⁴ However, the "total value of the assets less any offsetting liabilities" must exceed a certain threshold depending on the individual.
 - *Orphans*
For those not in the military and "an orphan who will be adopted in the United States after the immigrant orphan acquires permanent residence" and "will, as a result of the adoption or formal recognition of the foreign adoption, acquire citizenship under section 320 of the Act," the assets must exceed the difference of the household income and 125 percent of the Federal Poverty Guideline.²⁵
 - *Spouse of U.S. Citizen*
For those not in the military and who are either a spouse or a child (at least 18 years old) of a U.S. citizen, the assets must exceed three times the difference of the household income and 125 percent of the Federal Poverty Guideline.²⁶
 - *Nonmilitary*
For all other individuals, the assets must exceed five times the difference of the household income and 125 percent of the Federal Poverty Guideline. The asset requirement changes to 100 percent for those who are active duty military.²⁷ The new rule also considers if the individual has "sufficient assets to cover any reasonable foreseeable medical costs," if the individual has financial liabilities, and if the individual applied and received benefits described above after February 24, 2020.²⁸

¹⁹ 8 CFR 212.22(b)(1)(i)

²⁰ 8 CFR 212.22(b)(2)(i)

²¹ 8 CFR 212.22(b)(3)(i)

²² 8 CFR 212.22(b)(4)(i)(A)

²³ Ibid.

²⁴ 8 CFR 212.22(b)(4)(i)(B)

²⁵ 8 CFR 212.22(b)(4)(i)(B)(1)

²⁶ 8 CFR 212.22(b)(4)(i)(B)(2)

²⁷ 8 CFR 212.22(b)(4)(i)(B)(3)

²⁸ 8 CFR 212.22(b)(4)(i)(C)- 8 CFR 212.22(b)(4)(i)(E)

- **Education and skills:** DHS will now consider the level of education of the individual, any skills or certifications possessed by the individual, and if the individual is considered a primary caregiver.²⁹
- **Prospective immigration status and expected period of admission:** DHS will now consider whether the individual is applying for admission or change of status, the immigration classification (nonimmigrant or immigrant), and for those “seeking admission as a nonimmigrant, the nonimmigrant classification and the anticipated period of temporary stay.”³⁰

Heavily weighted factors

In addition to the factors described above, the new rule also lays out a number of other characteristics that can be “heavily weighted” either positively or negatively in assessing public charge.

Weighted positively

Having income, assets, or resources of at least 250 percent of the Federal Poverty Guideline (FPG) for the individual’s household size.³¹

Being authorized to work and actively working.³²

Having private health insurance. However, the health insurance must not include health insurance for which the individual receives subsidies in the form of premium tax credits under the Patient Protection and Affordable Care Act for it to be positively weighed.³³

Weighted negatively

Being authorized to work, but neither working currently, nor recently employed, nor reasonably expecting future employment, nor being a student.³⁴

Being diagnosed with a medical condition likely requiring “extensive medical treatment” and the individual is either uninsured, doesn’t have a way to obtain private insurance, nor pay for foreseeable medical costs.³⁵

Previously found inadmissible or deportable on public charge grounds by an immigration judge or the Board of Immigration Appeals.

Received benefits applicable to public charge for at least 12 of 36 months.³⁶

Impact on public benefit enrollment

The Kaiser Family Foundation (KFF) estimates that the final public charge rule will result in Medicaid and CHIP disenrollment rates of 15 percent to 35 percent among noncitizens and citizens living in a household with at least one noncitizen. Using KFF’s estimate, 2 million to 4.7 million beneficiaries could disenroll from Medicaid and CHIP.³⁷ These projected disenrollment rates are based on analysis of the potential negative impacts of the rule as well as previous research regarding the effect of welfare reform on enrollment in health insurance programs for immigrants.

Using the Survey of Income and Program Participation (SIPP) 2014 Panel and 2017 American Community Survey (ACS) data, KFF estimates that 8 in 10 noncitizens who don’t have LPR status have a least one characteristic—such as a lack of private health insurance, lack of a high school diploma, or family income below 125 percent of the FPL—that DHS could weigh negatively against them during a public charge determination.³⁸

²⁹ 8 CFR 212.22(b)(5)(i)

³⁰ 8 CFR 212.22(b)(6)(i)(A) & 8 CFR 212.22(b)(6)(i)(B)

³¹ 8 CFR 212.22(c)(2)(i)

³² 8 CFR 212.22(c)(2)(ii)

³³ 8 CFR 212.22(c)(2)(iii)

³⁴ 8 CFR 212.22(c)(1)(i)

³⁵ 8 CFR 212.22(c)(1)(iii)(A) & 8 CFR 212.22(c)(1)(iii)(B)

³⁶ 8 CFR 212.22(c)(1)(ii)

³⁷ <https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-final-public-charge-inadmissibility-rule-on-immigrants-and-medicaid-coverage/>

³⁸ <https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-final-public-charge-inadmissibility-rule-on-immigrants-and-medicaid-coverage/>

The Urban Institute’s Well-Being and Basic Needs Survey found that 13.7 percent of adults in immigrant families either don’t participate in (didn’t apply or dropped out) or had a family member who didn’t participate in a noncash benefit program in 2018, citing fear of risking their green card chances. According to the survey, 17.4 percent of adults in immigrant families with children younger than age 19 have avoided benefit programs in the last year compared with 8.9 percent of immigrant adults without children under 19. Hispanic adults in immigrant families are also more than twice as likely as non-Hispanic adults to avoid public benefit programs citation.³⁹

Public benefit programs that are not necessarily affected by the new rule may also feel cooling effects. For example, programs, such as WIC (formerly the Special Supplemental Nutrition Program for Women, Infants, and Children), that aren’t subject to the public charge changes, are reporting negative effects in participation following announcement of the proposed changes to the rule. The decline hasn’t been directly attributed to the public charge rule changes, although WIC providers nationwide cite public charge concerns as the driver of disenrollment and declining application rates in the last year.⁴⁰

Exemptions

The changes to the public charge determination rule are extensive. Yet, the actual scope of the rule may not be fully understood by all those affected by it. Moreover, while comprehensive, the rule allows for a number of exceptions, in particular for the most vulnerable.

The rule excludes from the public charge determination food assistance programs “through other programs, such as exclusively state-funded programs, food banks, and emergency services, nor will DHS discourage individuals from seeking such assistance.”⁴¹ DHS also won’t negatively weigh benefits received on behalf of another person, unless the individual applying for citizenship is a “listed beneficiary.”⁴² That means, assuming the immigrant isn’t included on the benefit, other members of an immigrant’s household may receive benefits such as SNAP or Medicaid without negatively impacting the immigrant’s LPR application. Similarly, an immigrant may apply for a benefit such as CHIP on behalf of his or her child, and the receipt of said benefit wouldn’t negatively impact the immigrant.

Also, Medicaid programs assisting some of the most vulnerable populations, such as children or pregnant women, won’t cause an individual to become a public charge.

That means families shouldn’t fear applying for Medicaid benefits for their children. Similarly, certain immigration statuses such as refugees⁴³ and asylees⁴⁴ are exempt from these requirements. Finally, public charge rules don’t affect active duty military or reserve members or their immediate family.

For state agencies: Outreach is essential

The administration’s new public charge rule could clearly make it more difficult for some immigrants to achieve LPR status. The rule’s provisions are broad, and there are multiple factors that will go into the determination of whether an immigrant is considered a public charge.

However, the rule does provide exemptions for those meeting certain criteria. State agencies play a considerable role in the administration of many of these public assistance programs. In light of these facts, it is imperative that state agencies conduct outreach to affected populations to disseminate the correct information. With a thorough understanding of the rule’s provisions, state agency officials can take significant steps to educate their clients about the changes in the public charge rule and help to ensure immigrants don’t unnecessarily deny themselves the public assistance benefits they may need.

Public charge rule exemptions

- Assistance from exclusively state-funded programs, food banks, and emergency services
- Medicaid for children and pregnant women
- Active duty military, reserve members, or their immediate family
- Benefits received on behalf of another individual
- Refugees and asylees

³⁹ <https://www.urban.org/urban-wire/public-charge-rule-looming-one-seven-adults-immigrant-families-reported-avoiding-public-benefit-programs-2018>

⁴⁰ <https://www.politico.com/story/2018/09/03/immigrants-nutrition-food-trump-crackdown-806292>

⁴¹ <https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds>

⁴² <https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds>

⁴³ 8 CFR 212.23(a) (1)

⁴⁴ 8 CFR 212.23(a) (2)



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