Public Charge: What Advocates Need to Know

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Panelists

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Public Charge: What Advocates Need to Know
What is Public Charge?

Is it how the government can find out where I am?

Does it mean that if my children use health care, I will be deported?

Does it mean that if use public benefits, I won’t qualify for naturalization?

I think it means I should get off of benefits now.

I think it means my family cannot access any benefits.
Accessing Services and Immigration

Does the person qualify for a benefit or public program?

If they use the program will it affect their immigration status or options?

Even if I’m not worried about legalizing my status, will they use information to deport me?
Public Charge
A test applied only at certain points along the immigration path:

- when apply for visa to enter the US and
- when apply to become a lawful permanent resident (LPR)

There is no public charge test when an LPR applies for naturalization.

Mainly impacts individuals who hope to immigrate through a family member (and their family members)
Public Charge Exemptions

Many immigrants are **not subject to public charge:**

- **Refugees and asylees**
- **Special Immigrant Juvenile Status**
- **U nonimmigrant status**
- **VAWA self-petitioners**
- **T nonimmigrant status**
- **DACA**
- **TPS**
- Others (Amerasians; Afghan and Iraqi military translators; certain Cuban and Haitian adjustment applicants; certain Nicaraguans and Central Americans under NACARA; Registry applicants; Soviet and Southeast Asian Lautenberg parolees)
- **Most legal permanent residents**
- **U.S. citizens**

*But public charge applies if getting green card through family!*
“Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.”
This is a future looking test.
Public Charge - assessing future likelihood

Immigration officials are **required** by law to consider:

- age
- health
- assets, resources, and financial status
- family status
- education and skills
- affidavit of support
- other factors may be considered

**DHS must consider the totality of circumstances**
Public Charge – Current Policy

Programs that currently “count”

- Cash assistance
- Long term institutionalization

Programs that do not “count”

- Health and nutrition programs
- Any non-cash assistance

Use of Benefits by Family members do not count against you
Public Charge Rule Timeline

USCIS Drafts Regulation

Draft Goes to Office of Management & Budget (OMB)

Opportunity for Public Comment

Proposed Rule Published in Federal Register

Dec. 10

Final Rule Published

No new rule yet, but people are panicked

Oct. 10
Public Charge

**Current:** Someone who is likely to become primarily dependent on the government to support themselves.

**Proposed Rule:** An immigrant “who receives one or more public benefits”
Proposed Changes

- New definition of “public charge”
- Totality of circumstances test has new detailed negative factors that make it harder for low and moderate income people to pass
- Additional public benefits included
Will not punish prior use of newly considered benefits

Proposed Rule Published in Federal Register Oct. 10, 2018

Final Rule Published

New Benefits Begin to Count for Public Charge

60 Days

Newly added benefits only start counting from here forward

???
Weighted Factors

 Certain heavily weighted factors

• Positive—Includes having income and assets of at least 250 FPL

• Negative—Includes receiving public benefits in the past 36 months
Benefits Considered in Proposed Rule

- Medicaid (federally-funded Medi-Cal),
  NOT including:
  - Emergency services
  - School-based benefits to children
- Food Stamps- SNAP (federally-funded CalFresh)
- Section 8 housing assistance
- Subsidized housing
- Financial assistance under Medicare Part D
- Long-term care
- Cash assistance: SSI, TANF, General Assistance

*proposed additions in red, cash assistance and long-term care would continue to be considered*
What does **NOT** count against the immigrant?

- BENEFITS USED BY U.S.-CITIZEN FAMILY MEMBERS!!
- Children’s Health Insurance Program (CHIP) – this may change in final rule
- Emergency and school-based Medicaid
- Emergency and disaster relief
- Services available to the community as a whole (no income requirement)
- WIC
- Public health services
- School-based nutrition services and public education, including Head Start
- Earned benefits, such as unemployment, social security retirement, workers compensation
- Tax credits
- Any other federal, state, or local benefit that is not listed on the prior slide
- Benefits used by members of the military, Ready Reserve, and their spouses and children
• Receipt of benefits by dependents (including U.S. citizen children) will **not** directly be a factor in applicant’s public charge test.

• If a child or family member is an immigrant, his/her own use of benefits counts toward his/her own public charge determination.

• Dependents are included in the calculation of household size and may make it harder for immigrants to meet the income test.
Eligibility for Benefits:

THE PROPOSED CHANGES DO NOT AFFECT A PERSON’S ELIGIBILITY FOR BENEFITS!

All immigrants and their family members can and should apply for and receive all benefits they are otherwise eligible for.
What Can We Do?

Step 1: Submit a Comment on the Proposed Rule by December 10th!

Step 2: Share Clear and Accurate Information with the Community
Step 1: Submit Comments

• The Government must review and respond to comments before publishing a Final Rule

• Comments can be from an individual or organization and should describe potential impact on community based on your personal experience or work with the community.

• There is guidance to help you draft your comments- try to avoid using generic language. https://protectingimmigrantfamilies.org/resources/

• Comments can be submitted by mail or on-line at: https://protectingimmigrantfamilies.org/#take-action
Step 2: Inform the Community

**PUBLIC CHARGE:**

👍 Continue enrolling in and receiving public benefits!

✗ Proposal only- no changes yet

✔ Nothing to do with eligibility for public benefits

👩‍👧‍👦 Only applies when seeking permanent residence (green card) through a relative

👨‍👦‍👧‍👦 Many immigrants NOT impacted (refugees, U, VAWA, DACA, TPS, etc.)

⚠️ If a final rule- there will be time to change enrollment- talk to an expert first
Questions and Answers
Additional Resources

https://www.shfccenter.org/sjvhealthfund
Thank You!