



FAQs re:
Proposed Rule Expanding Definition of Public Charge
As of 10/2/18

What is “public charge”? When an individual applies for Lawful Permanent Residency status (aka a “Green Card”), the US Customs and Immigration Service (USCIS) evaluates whether he or she has used – or is likely to use – certain public benefits that could make them a “public charge.” If so, this is a “heavily weighted negative factor” against the applicant’s request. In this proposed regulation, the Administration is proposing to significantly expand the list of programs that USCIS must consider when determining if an immigrant is a public charge.

At present, what qualifies a person as a public charge? For the past 20 years, an immigrant has been considered a public charge only if he or she is “primarily dependent” on the government, as shown through the receipt of cash assistance for income maintenance (e.g., TANF or SSI) or on government-funded long-term institutional care.

Under the Administration’s proposal, what additional programs would be considered when determining if an immigrant is a public charge?

- Non-emergency Medicaid (with limited exceptions)
- Supplemental Nutrition Assistance Program (SNAP)
- Housing support (e.g., Section 8 vouchers, public housing)
- Medicare Part D subsidies

The Administration has not yet decided whether to add CHIP to this list.

The proposed rule also considers whether an immigrant has a health condition that could affect their ability to study or work, and whether they have private insurance or the financial means to pay medical costs out of pocket.

Under the proposal, would sliding fee discounts at health centers be considered in public charge determinations? No. Only those benefits explicitly listed in the proposed regulation would be considered – and sliding fee scale discounts are not listed.

When would this proposal go into effect? The soonest possible effective date would be many months from now. Before any changes could go into effect, the Administration must give the public at least 30 days to submit comments, and then review and respond to all the comments and publish a Final Rule (which may differ from the proposed rule.) After the Final Rule is published, there would be a 60-day period before it becomes effective.



Is there any benefit to withdrawing from Medicaid, SNAP, etc., now? No. If any changes do occur, they will not become effective until 60 days after the Final Rule is published – and due to procedural requirements, that will be many months from now, at a minimum. In the meantime there is no benefit to withdrawing (or refusing to apply) for benefits to which an individual is qualified. If changes do occur, the individual will have enough time to consider his or her next steps before there would be any impact on their future Green Card application.

How much benefits would an immigrant need to receive – and over what time frame – to be considered a public charge?

- **Timeframe:** For the benefits that the Administration is proposing to add to public charge determinations (e.g., Medicaid, SNAP), USCIS will generally look at the most recent 36 months. However, they will not look before the effective date of the Final Rule. For example, if an immigrant has a Green Card appointment one year after the Final Rule's effective date, federal officials will only look at their use of Medicaid, etc. for the most recent year.
- **Threshold amounts:** The Administration is proposing that an immigrant be considered a public charge if over the preceding 36 months (or since the Final Rule's effective date, whichever is shorter) he or she:
 - received benefits whose total cash value exceeded 15% of the FPL for a single year (\$1,821 in 2018) over a total of 12 months
 - *Both SNAP and some housing support are counted as cash benefits.*
 - received Medicaid or other non-cash benefits for a total of 12 months.
 - *Each program is counted separately – so if a person receives both Medicaid and non-cash housing support during the same 6 month period, it counts as 12 months.*
 - If a person receives both cash and non-cash benefits, the thresholds are lower.

If an immigrant's family member receives public benefits, could that hurt their chances of getting a Green Card under the proposal? No. Under the proposal, Federal officials will only look at the applicant's use of public benefits – not whether any of their family members used them.

What happens next? Once the proposed rule is officially published in the Federal Register, the public will be able to submit comments for 60 days. After reviewing all public comments and making any changes it deems appropriate, the Administration will issue a Final Rule, which will go into effect 60 days after being published. In the meantime, and until a final rule is in effect, federal officials will continue to apply the current public charge policy.

What messages should we be sharing with our patients?



- For immigrants already in the US, there has been no change in policy around public charge.
- If any changes do occur, they will not become effective until 60 days after the Final Rule is published – and due to procedural requirements, that will be many months from now, at a minimum.
- In the meantime (until the Final Rule is published and goes into effect) there is no benefit to withdrawing (or refusing to apply) for benefits to which an individual is qualified, such as Medicaid, SNAP, and housing support. If changes do occur, an individual will have enough time to consider his or her next steps before there would be any impact on their future Green Card application.
- The following benefits are NOT proposed to be included in public charge determinations: WIC, emergency health services (covered under Medicaid), the Earned Income Tax Credit (EITC); subsidies for Marketplace health insurance plans and LIHEAP.

Could receiving immunizations or treatment for communicable diseases qualify an immigrant as a public charge? Not if they are received outside of the Medicaid (and possibly CHIP) program. The law¹ (not the regulation) explicitly states that “public health assistance... for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases” may not be considered in determinations of public charge. However, if a patient receives these services or other services under Medicaid, the fact that they are on Medicaid will be taken into consideration as described above.

If an immigrant has used public benefits, will they definitely be denied a Green Card? Not necessarily. The receipt of benefits is only one of several factors that Federal officials consider when reviewing applications to determine whether a person is likely to become a public charge. (Other factors include age, health, financial status, skills and education, and whether they have dependents and/or a sponsor.) Officials consider a balance of factors, and positive factors can outweigh negative factors. There is no official formula for weighing the various factors; rather, the Federal official has significant discretion in deciding whether to approve an application. However, the proposed rule would require that receiving the included public benefits within the last 36 months be a “heavily weighted negative factor” in the official’s decision. The proposed regulations also adds that having an income over 250% of the federal poverty level would be “heavily weighted positive factor.”

If an immigrant has an income below 125% FPL, will they definitely be denied a Green Card? Not necessarily. As discussed above, income is just one of several factors that Federal officials

¹ 8 U.S. Code § 1611



must take into consideration when deciding whether to approve a Green Card application. However, like receiving benefits, it will be considered a negative factor.