

Public Charge: Impact on Reproductive and Sexual Health

Priscilla Huang, National Health Law Program

Sylvia Castillo, Essential Access Health

Roadmap

1. What is public charge?
2. What are the changes to public charge in the final rule?
3. What will be the impact of these changes on:
 - Californians
 - Sexual and reproductive health coverage and care
4. Next Steps: Ways to Engage

The Invisible Wall



Trump's Invisible Wall

<p>PUBLIC CHARGE: Visas and green card processing <i>outside</i> the U.S.</p> <p>(DOS - Foreign Affairs Manual (FAM))</p>	<p>PUBLIC CHARGE: Visa extensions & Status changes</p> <p>(DHS Proposed Rule)</p>	<p>PUBLIC CHARGE: Green card processing <i>inside</i> the U.S.</p> <p>(DHS Proposed Rule)</p>	<p>SPONSOR DEEMING & LIABILITY: Potential application to more programs</p> <p>(White House memo)</p>	<p>PUBLIC CHARGE: Grounds for deportation</p> <p>(Anticipated DOJ NPRM)</p>	<p>FEE WAIVER: Removing receipt of means-tested benefits from eligibility list</p> <p>(DHS Proposed Rule)</p>
<p>CITIZENSHIP QUESTION IN CENSUS 2020: Chills civic participation and will limit funding for basic needs programs that depend on accurate count</p> <p>(SCOTUS decision)</p>	<p>PUBLIC HOUSING ACCESS: Closes door to mixed status families</p> <p>(HUD Proposed Rule)</p>		<p>ACCESS TO SSA BENEFITS: Closes door to limited English proficient speakers</p> <p>(SSA Proposed Rule)</p>	<p>ACCESS TO FOOD STAMPS: Closes door to those who are unemployed and underemployed</p> <p>(USDA Proposed Rule)</p>	

Public charge – Background

Current public charge test

Definition

A person who is likely to become primarily dependent on the government for subsistence.



Benefits Considered

Only two types of benefits considered:

1. Cash assistance for income maintenance
2. Institutionalization for long-term care at government expense



Totality of Circumstances Test

- ✓ Age
- ✓ Health
- ✓ Family status
- ✓ Financial status
- ✓ Education and skills
- ✓ Affidavit of support

When does public charge come up?

A public charge assessment is made when a person:

- Applies to enter the U.S.
- Applies to adjust status to become a Lawful Permanent Resident (LPR)
- A green card holder leaves the U.S. for more than 180 consecutive days (6 months) and reenters

A public charge assessment is not made when a person:

- Applies to become a U.S. citizen
- Applies to renew a green card

Exempt from public charge inadmissibility

- Refugees and asylees
- Survivors of trafficking (T visa) and other serious crimes (U visa)
- Self-petitioners under the Violence Against Women Act
- Special immigrant juveniles
- People applying for TPS
- DACA renewals
- Other

Public charge- DHS final rule

Status of Regulations

Inadmissibility

- Oct. 10, 2018 Department of Homeland Security (DHS) published proposed rule
- Aug. 14, 2019 DHS published final rule
- **Rule takes effect on October 15, 2019, unless stopped by the courts**

Deportability

- Rule is being developed by the Department of Justice (DOJ)

August 14, 2019 DHS Final Rule

Definition

A person who is “more likely than not to receive” one or more specified public benefits for at least 12 months in a 36 month period*



Benefits Considered

Adds health, nutrition and housing programs

+

- Cash assistance for income maintenance
- Institutionalization for long-term care at government expense (rev'd before 10/15/19)



Totality of Circumstances Test

- ✓ Age
- ✓ Health
- ✓ Family status
- ✓ Financial status
- ✓ Education and skills
- ✓ Affidavit of support



* Receiving two benefits in one month counts as 2 months of benefits

Add Standards and Evidence to Totality of Circumstances Factors

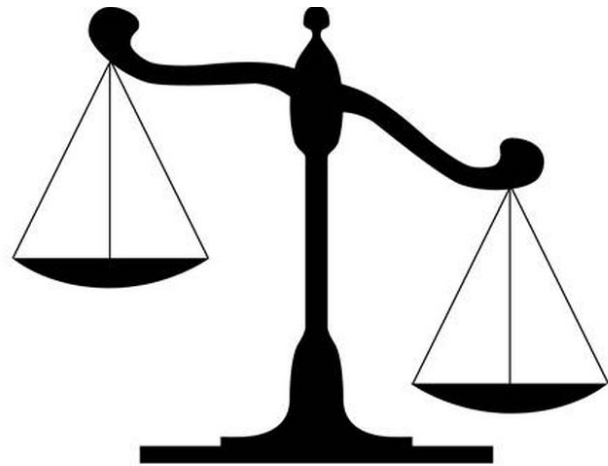
- **Age:** Defines working age as 18 – 62 y.o.
- **Health:** Diagnosed with medical condition that could affect ability to work/study or require extensive care/institutionalization in the future
- **Family:** Household size
- **Financial resources:**
 - Income at least 125% FPL (or assets equal to 5x the gap for adults, 3x for spouse/child)
 - Whether applied for or received any public benefit
 - Has private health insurance or resources to pay for reasonably foreseeable medical expenses
- **Skills and work experience** – includes assessment of English proficiency; education level is negative if not at least a high school degree or equivalent

Heavily Weighted Negative Factors

- Authorized to work but not working and not a full-time student, unable to demonstrate recent employment or reasonable prospect of employment
- **Has received or been certified to receive a public benefit for more than 12 months out of the last 36 months**
- Has been **diagnosed with a medical condition** that could interfere with work/school or person's ability to care for themselves or that could require expensive treatment/institutionalization
- **Uninsured without the prospect of receiving private insurance/paying for care**
- Previously determined to be a public charge

Heavily Weighted Positive Factors

- Household has income or resources of at least 250% of FPL (>\$64k for family of 4)
- Has private health insurance for the expected period of admission that **does not include ACA plans subsidized by premium tax credits**



Which benefits are considered?

- Federal, state, local or tribal **cash assistance** for income maintenance (CalWORKs, TANF, etc.) and
- Certain **noncash** medical, housing and food benefits:
 - Federally funded Medicaid (with exceptions)
 - SNAP (CalFresh)
 - Section 8: vouchers & project-based
 - Public housing



Exceptions to receipt of Medicaid benefits

- Emergency Medicaid
- Medicaid benefits received by a person under 21 years of age
- Medicaid benefits received during pregnancy and for 60 days after
- Individuals with Disabilities Education Act (IDEA) services or benefits funded by Medicaid
- School-based Medicaid services
- Any benefits received while a person was exempt from public charge (e.g., asylees/refugees)

Receipt by family members

Benefits received by a **family member** are not considered in determining whether the individual is likely to be a public charge unless the individual is also receiving the benefit



EXAMPLE

A mother with a temporary work visa enrolls her citizen child in Medicaid but she is not enrolled. If the mother applies for her green card, any benefits received by her child are not considered in the mother's public charge evaluation.

Implications of New Public Charge Rule

Spotlight: Reproductive and Sexual Health Services

Subject to public charge:

- Medi-Cal (unless exempt)
- Family PACT

Not subject to public charge:

- Medi-Cal during pregnancy + 60 days post partum
- Medi-Cal services under 21 years old (minor consent, school-based health services)
- Ryan White
- Title X
- CDC, state, or county funded health screenings, immunizations, and treatment programs
- My Health LA
- Other programs not listed in the rule

Implications on Immigrant Communities



Illustration by Edel Rodriguez for LA Times

Green Card Holders / Lawful Permanent Residents

Of the more than 1 million new green cards in 2016...

- 48%: Immediate relatives of U.S. Citizens
- 28%: Family-based preference
- 12%: Employment-based preference
- 13% Refugee/Asylee adjustment
- 4% Diversity lottery

Source: Migration Policy Institute



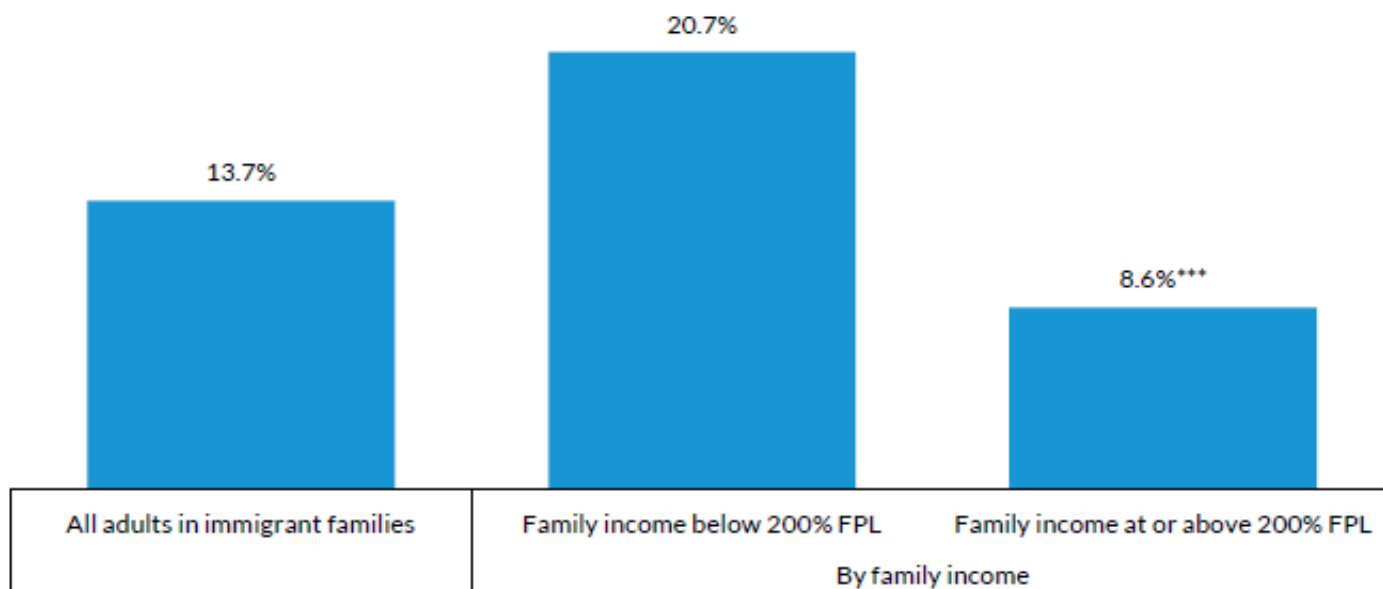
Potential impact on California

- 11 million Californians are foreign born
- 1 in 2 children in California has at least one immigrant parent
- 74% of non-citizens live in households with a U.S. citizen
- Immigrants contribute \$715 billion to California's economy

Chilling effects

FIGURE 1

Share of Adults in Immigrant Families That Avoided Noncash Public Benefits in the Past Year Because of Green Card Concerns, Overall and by Family Income, December 2018



URBAN INSTITUTE

Source: Well-Being and Basic Needs Survey, December 2018.

Notes: FPL = federal poverty level. Adults are ages 18 to 64. Respondents reported that either they or someone in their family did not apply for or stopped participating in noncash public benefits because they worried it would disqualify them or a family member from obtaining a green card.

*** Estimate differs significantly from adults in immigrant families with family incomes below 200 percent of FPL at the 0.01 level, using two-tailed tests.

Chilling effects

FOOD

POLITICO

Immigrants, fearing Trump crackdown, drop out of nutrition programs

Both documented and undocumented immigrants fear that accepting federal aid could make them ineligible for a green card if rules are changed.

By HELENA BOTTEMILLER EVICH | 09/03/2018 08:17 AM EDT | Updated 09/04/2018 01:29 PM EDT

PowerPost

Follow @powerpost

Get The Health 202 Newsletter

PowerPost Analysis

The Health 202: Under Trump, immigrants back away from Medicaid, Obamacare subsidies

By Paige Winfield Cunningham

April 11

THE PROGNOSIS

Enrolling in Medicaid or an Obamacare plan doesn't hurt immigrants' chances of gaining permanent residency in the United States. That might change soon, under a major policy shift the Trump administration is considering that could curtail legal immigration.

Spillover effects



Covered California 2019 Open Enrollment Early Observations and Analysis

However, Covered California's analysis found a substantial differential impact among some populations where English is not the preferred spoken language. In particular, the number of Mandarin speakers dropped 28 percent, Spanish speakers dropped 29 percent and Korean speakers dropped 46 percent. By comparison, the number of English speakers dropped 22 percent.

Covered California believes this is an area of concern that warrants further study and may be the result of factors outside of the federal removal of penalty, such as concerns over whether receiving financial help for health coverage would designate someone a "public charge" and affect their immigration status — an issue that received substantial press coverage in "in-language" media.

Next Steps: Ways to Engage

Legal challenges

To date, six lawsuits are challenging DHS' final public charge regulation, including:

- *State of California et al v. U.S. Department of Homeland Security*
- *La Clinica de la Raza et al v. Trump*
 - NHeLP/NILC/WCLP/AAAJ-LA representing a group of community organizations, including California Primary Care Association and MCH Access
 - Motion for preliminary injunction filed 9/4/19 to stop rule from going into effect
- *City and County of San Francisco and Santa Clara v. USCIS*

Other anticipated new rules and policies

- Dept. of Justice rule on **public charge deportability** at OMB for review – could be issued as a proposed rule at any time
- Dept. of State also likely to amend its **Foreign Affairs Manual** to mirror DHS final rule (for public charge determinations made overseas for individuals seeking entry into the U.S.)
- States may change policies based on **Aug. 23 CMS Guidance** on sponsor deeming and liability

Ways to Engage

- Stay informed -> participate in webinars + in-person trainings
- Share information and resources with advocates + community members
- Engage in conversation: write op-eds, share how your community will be affected

Main messages:

- 1. Final rule is not in effect yet, don't dis-enroll from services without first consulting an immigration lawyer trained on public charge.*
- 2. Encourage family members who are not affected by the rule to use services.*

Resources

- California Health and Human Services Agency Public Charge Guide (issued 9/11/19)
- Protecting Immigrant Families Campaign
 - Know Your Rights (for community members)
 - Analysis & Research (for advocates)
- California Immigrant Policy Center
 - Chair, California PIF
- Health Consumer Alliance (888-804-3536)
 - Offers free, confidential legal assistance to all consumers

Questions?

- Priscilla Huang (huang@healthlaw.org)
- Sylvia Castillo (scastillo@essentialaccess.org)