Public Charge: Proposed Changes and How to Respond

National Health Center Immigration Workgroup
November 28, 2018
We strongly recommend calling in **on your telephone**

**Phone:** 866-469-3239  
**Access Code:** 632 274 023 #

**Your Attendee ID:** Listed below the access code in the box under “Select Audio Connection”.

To ask/answer a question, or share a comment, please use the Chat box on the right hand side of the screen.

You can download **these slides, NACHC template comment**, and many other resources from NACHC’s webpage:

http://www.nachc.org/health-center-issues/emerging-issues-resources/caring-immigrant-patients/  
(or google “NACHC immigrant” to get to the webpage)
• Public Charge Today
• Changes Being Proposed
• How to Respond
• Resources Available on CA PCA website
• Q&A
Key Take-Aways

1. The Administration has proposed dramatically expanding circumstances under which a person could be denied a Green Card because they are a “public charge.”

2. Using Medicaid or SNAP in the recent past could make someone a “Public Charge.”

3. There is significant confusion about what is being proposed, and the “chilling effect” could exceed the impact of the proposal itself.

4. Dec. 10 is the deadline to submit comments on the proposal. NACHC, CPCA, AAPCHO and others have prepared template comments.

5. It is important to make at least 30% of your comments unique.

6. There will be an ongoing need to keep educating patients about what is and isn’t changing, and when.
The Co-Leads of the National Health Center Immigration Workgroup

The leaders and members of the Protecting Immigrant Families Coalition

- Nearly 280 Active Member Organizations
- 5 Working Groups: Communications, Federal Advocacy, Field, Policy & Legal Analysis, Research

Click here to see PIF Campaign overview
Public Charge Today
• Under long-standing policy, when many legal immigrants apply for Legal Permanent Residency (aka a Green Card), the US Government determines if they are likely to become a “public charge”.

• If yes, their application can be denied.
Many immigrants are not subject to public charge tests:

- Refugees and Asylees
- VAWA self-petitioners
- Survivors of Domestic Violence, Trafficking, or other Serious Crimes (Applicants/recipients of U or T visa)
- Special Immigrant Juveniles
- Certain Parolees, and several other categories of non-citizens
Longstanding public charge test

**Definition**
A person who is considered “likely to become primarily dependent on the government for subsistence.”

**Benefits Considered**
Only two types of benefits considered as making a person primarily dependent on the government:
1. **Cash** assistance for income maintenance
2. Institutionalization for **long-term care** at government expense
Longstanding public charge test

**Forward looking test:** Is the person likely to rely on cash or long-term care *in the future*?

**Assessment Considers Several Factors**
("Totality of the Circumstances")

- Age
- Health
- Family Status
- Income and Financial Status*
- Education and Skills
- Affidavit of Support

Officially, no one factor (including past use of cash benefits or institutional long-term care) is determinative/dispositive.

Positive factors can outweigh negative ones.

Immigration officials have significant discretion.
Changes Being Proposed
Changes Officially Proposed in October 2018

• The proposed changes were announced in a “Notice of Proposed Rulemaking (NPRM) that was published by the Administration in early October.

• Last spring, two different drafts of the NPRM were leaked to the press.
  • There are important differences between the leaked drafts and official NPRM – adding further confusion & expanding the “chilling effect”.
Overview of Proposed Changes

1. New definition of “public charge”

2. Additional public benefits include in determinations.

3. Totality of circumstances test has new detailed negative factors that make it harder for low and moderate income people to pass.
Broader Definition of Public Charge

**Currently**
An immigrant “likely to become primarily dependent on the government for subsistence”

**As Proposed**
An immigrant “who receives one or more public benefits”:
- from a list of specified benefits, and
- above a minimum threshold (dollar value, time period, or a combination.)
New Public Benefits to be Considered

The Administration is proposing to add the following programs to public charge tests:

- 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 is requesting comment on whether to add CHIP to this list.

*Programs not explicitly on the list – e.g., SFS discounts at FQHCs – will not be included in public charge tests.*
Minimum Thresholds

It would be a “heavily weighted negative factor” if over the previous 36 months*** an individual received:

Medicaid or other non-cash benefits for a total of 12 months.

• Each program is counted separately – so receiving both Medicaid and non-cash housing support during the same 6 month period counts as 12 months.

Benefits whose total cash value exceeds $1821 (15% of the FPL) over 12 months

• Both SNAP and some housing support count as cash benefits.
• Also TANF.

If an individual receives both cash and non-cash benefits - the thresholds for each category are lower.

*** For newly-added benefits, any use prior to the effective date of the proposed rule will not be considered. More info below….
What About Family Members?

• If a person’s family members receive benefits individually, this will not negatively impact their own public charge test.
  • Ex: If a child receives Medicaid, this will not count against the parent.

• However, some benefits are considered to be received by the entire family.
  • Ex: SNAP – If a family of 4 receives $100 a month, this counts as each $25 in cash benefits for each individual.
New “Heavily Weighted” Negative Factors

Heavily Weighed Positive Factor

Heavily Weighed Negative Factors

- Lack of job or job prospects
- Health condition w/o private insurance or $ to pay for care
- Receipt of public benefits

Individual or Household income 250% of FPL or above
What Happens Next?

- **Dec. 10, 2018** – Deadline for public comments.

- Administration reviews all comments and prepared Final Rule.

- Final Rule is published.

- Final Rule goes into effect 60 days after publication. *Use of newly-added benefits will start being considered on this day.*

Until the effective date of the Final Rule, the current process remains in effect.
How to Respond?
Two Potential Responses

#1. Submit comments expressing your concerns about the proposal – and encourage your staff, patients, and partners to do the same.


#2. Educate your patients about the proposal, to counter the “chilling effect.”

   TIMEFRAME: On-Going
Messages for Patients

• Many immigrants are not subject to Public Charge test.

• For those who are subject to public charge, no changes will be effective until 60 days after the Final Rule is published
  • That will be many months from now, at a minimum.
  • The Final Rule may look very different from the proposal – or may never be published at all.

• In the meantime there is no benefit to withdrawing (or refusing to apply) for benefits.

• If changes do occur, individuals will have enough time to consider next steps before there would be any impact on their future Green Card application.

NILC has an excellent document on “How to Talk about Public Charge to Immigrants and Their Families”. The link is on NACHC webpage.
There are many, many resources available to assist in writing comments. For example:

• NILC has sample language and tips in English and Spanish.
• The Protecting Immigrant Families coalition has a website to help draft & submit comments directly.
• The CA PCA has numerous resources – more on that later.
• AAPCHO has a template for FQHC comments, & links to comment postcards in multiple Asian languages
• Asian Health Services FQHC has a website & form to submit comments directly
• NEMS (a FQHC that serves Asian-American patients) has check-off comment form in English and Mandarin
The NPRM may/will:

1. Lead to worse health outcomes and decreased productivity for immigrants and their families, hampering their ability to become self-sufficient and contribute to their communities.
   - *Direct effects on immigrants who might seeking a Green Card soon.*
   - *Chilling effect, which will spread to individuals and programs not directly impacted.*

2. Discourage parents from seeking health care for their children, and including CHIP in public charge determinations may/will exacerbate this impact.

3. Increase uncompensated care costs for CHCs and other safety net providers, potentially putting their financial stability at risk.

4. Increase costs for US taxpayers.

5. Significantly underestimates the impact of the proposal.
How to Use NACHC Template

1. Choose which version to use:
   • Short one – summarizes key concerns
   • Long one – explains concerns, and cites research to support them.

2. MAKE IT UNIQUE:
   • **Goal is for 30% of the content to be UNIQUE to your letter – otherwise, unlikely to be read individually.**
   • NACHC template indicates four ways you can “individualize” the template:

   **YELLOW:**
   Basic information that is specific to your organization – your name, who you serve, etc. *You can add a lot of “unique” language here.*

   **GREEN:**
   Tone-related language that you should adjust to reflect your preferences and environment.

   **BLUE:**
   Stories/ impact. Ideally, add a story about a patient or provider that underscores the point. If you don’t have any stories that fit, then talk generally about the impact and/or cite a study that underscores it.

   **PINK:**
   Fairly technical section (about the cost-benefit analysis) that you may want to shorten or skip.
Two Notes of Caution

1. **Education vs Legal Advice?**
   Health centers staff can explain the current law and proposed changes to their patients – but should refrain from giving advice about individuals’ and families’ specific situations.
   - General info = Education, which is fine
   - Advice re: specific situations = Legal advice – NOT OK

2. **Financing for activities related to public charge advocacy?**
   - Ideally, use income from “other lines of business” (aka unrelated to the Section 330 scope of project.)
   - The use of excess program income is allowable.
   - Federal grant funds may only be used if these activities can be linked directly to your 330 scope, through a line item such as “advocacy.”

**NOTE:** Advocacy around a proposed regulation is not considered “lobbying.”

Contact Colleen at cmeiman@nachc.org for more info on these issues.
Resources Available from CA PCA

- **CPCA Immigration Resource Page**
  - **Public Charge Resources**
    - Public Charge Advocacy Toolkit (created by CPCA and the PIF Funded Coalition)
    - Fiscal Calculator & Directions
    - Talking points for media, legislative staff, and patients
    - Public Charge Factsheet for patients and legislators
  - **CA Comment Portal**
    - Downloadable Template Letters
    - Prepopulated comments
    - Multiple template letters for different sectors, including:
      - Health Centers (staff & patients)
      - Migrant & Ag workers
      - LGBTQA
      - Impact to children
      - Legal Providers
Resources Available from CPCA

• Template vs. Comment Portal

<table>
<thead>
<tr>
<th>Template Letters</th>
<th>Comment Portal</th>
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<tbody>
<tr>
<td>• Target: Health Center/Organization</td>
<td>• Target: Health center staff/community/patients</td>
</tr>
<tr>
<td>• Submit via regulations.gov</td>
<td>• Pre-populated messages are edit friendly</td>
</tr>
<tr>
<td>• Includes more specific info about impact to health centers</td>
<td>• bit.ly/CacoalitionPIF</td>
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<tr>
<td>• bit.ly/Cacomments</td>
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<tr>
<td>• Once submitted email copy to advocacy@</td>
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TIPS FOR SUBMITTING EFFECTIVE COMMENTS

- **Clearly identify the issues** within the regulatory action on which you are comments (a particular word, phrase or sentence). Provide the page number, column, and paragraph citation from the federal register document.

- If your organization disagrees with a proposed action, **suggest an alternative** (including not regulating at all) and include an explanation and/or analysis of how the alternative might meet the same objective or be more effective.

- When possible, **support your comment** with substantive data, facts, and/or expert opinions.

- Allow advocates to identify credentials and experience that may **distinguish their comments**

- Comment periods close at 11:59 pm Eastern Time on the date comments are due

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Questions?

Colleen Meiman – NACHC – cmeiman@nachc.org
Liz Oseguera – CA PCA - loseguera@c pca.org
Jeff Caballero – AAPCHO - jeffc@aapcho.org
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