



Public Charge FAQs

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Provided by the National Health Center Immigration Workgroup

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Status of the Public Charge Rule

1. **Is the new regulation on public charge currently in effect?** Yes. On January 27, 2020 the Supreme Court ruled 5 to 4 that the Administration may begin enforcing the new rule while other litigation efforts move forward. The final rule applies to applications and petitions postmarked (or submitted electronically) on or after February 24, 2020.
2. **When was the new public charge rule finalized and originally scheduled to become effective?** While the concept of public charge has existed for over a century, a new regulation (rule) expanding the definition of public charge was finalized in August 2019. It was originally scheduled to go into effect on October 15, 2019, but a series of courts blocked the implementation on that date.
3. **Could the implementation status of the new public charge rule change again?** Yes. Several lawsuits that argue the rule is unconstitutional are still making their way through the court system. While the January 27 Supreme Court ruling only allowed the rule to go into effect while these lawsuits proceed, it did not address the merits of the legal arguments seeking to block the rule. Therefore, it is possible that future courts may overturn the rule on its merits. It is unclear when such a decision would occur.

Background on the new public charge rule:

4. **What is "public charge"?** Public Charge is a term used in immigration law to describe an individual who is dependent on the government. When determining if a person is likely to become a public charge, the Immigration and Nationality Act (INA) requires the government to consider a variety of factors, including the person's age, health, income/resources, family situation, education and skills. This is called the "totality of

"circumstances" test. The statute does not include an official formula for weighing the various factors; rather, the Federal official has significant discretion in deciding whether to approve or deny an application.

It is important to understand that the public charge assessment is determining whether, in the opinion of an immigration official, the person is more likely than not to become a public charge in the future. A person does not need to have used any benefits to be deemed likely to become a public charge. NOTE: as detailed below, the rule only applies in limited circumstances to immigrants seeking entry into the U.S. or applying for a change in immigration status to obtain a green card.

5. **What does the new rule do?** The new rule significantly expands the list of public benefits that immigration officials must consider when conducting a "public charge test," while also redefining how immigration officers evaluate the other factors that must be considered when evaluating if somebody could become a public charge in the future. For the past 20 years, only Temporary Assistance for Needy Families (TANF) and institutional long-term care at the government's expense were considered in public charge tests; the new rule adds nonemergency Medicaid (with certain important exemptions — see list below), Supplemental Nutrition Assistance Program (SNAP), and federal housing benefits to the list of benefits considered.

6. **Overview of when new public charge rule applies:** While the new rule is very complex, it can be helpful to think in terms of WHEN, WHO, and to WHAT it applies. The use of the newly-added benefits (e.g., Medicaid, SNAP, housing) can impact an individual's ability to become a legal permanent resident and obtain their green card. However, it's very important to remember that the use of benefits is only one of the many factors that must be considered in the public charge assessment. For some individuals, their use of benefits wouldn't necessarily matter since the review of the other factors could already deem them as a public charge.

The rule applies only to situations when all three apply:

- **WHEN:** For people currently residing in the US, public charge tests are conducted only when an individual applies to enter or reenter the country or when they apply to obtain their Green Card. There is no public charge test when an individual applies to renew their Green Card, or applies for citizenship.
- **WHO:** Only certain categories of legal immigrants are subject to a public charge test (and only when applying for a legal permanent residency for those already in the country.) The following categories of legal immigrants are not subject to a public charge test:
 - Refugees, asylees, survivors of trafficking, domestic violence and other serious crimes, and other "humanitarian" immigrants.
 - Lawful permanent residents (aka people who already have Green Cards) are not affected unless they leave the US for over 180 consecutive days and seek to reenter.
 - Lawful permanent residents seeking to naturalize (become a citizen)

- Persons seeking DACA renewal
- Thus, the public charge rule only applies to legal immigrants who do not fit into one of the categories listed above.
- **WHAT:** Under the new rule, public charge tests will consider if the applicant used the following programs for 12 months or more in the aggregate over the past 36 months* :
- Some Medicaid coverage (See list of five exemptions below.)
 - SNAP
 - Federal housing benefits
 - TANF
 - Institutional long-term care at the governments expense

*Under the new rule, a public charge determination for benefits use will only be made if an individual uses the above benefits for an aggregate of 12 months over any 36-month period of time; for example, use of both SNAP and TANF in a single month will count as two months for the test. Also, benefits used prior to the February 24, 2020 effective date will not be considered in public charge tests.

However, any public benefits that are net included on the list above will not be considered in public charge tests. These benefits include:

- Health Center services, including sliding fee discounts and access to 340B drugs
- The following types of Medicaid benefits:
 1. Emergency Medicaid
 2. Medicaid benefits received by a person under 21 years of age
 3. Medicaid benefits received by a woman during pregnancy and for 60 days after
 4. Medicaid benefits received by active duty or Ready Reserve members of the armed forces and their spouses and minor children
 5. Medicaid received while a person was exempt from public charge
 - Subsidies for insurance purchased through the ACA Marketplace
 - Food programs other than SNAP — e.g., Women, Infants, and Children (WIC), school lunches, and food banks
 - Low-Income Home Energy Assistance Program (LIHEAP)
 - Any other benefits not explicitly listed in the new regulation (e.g., Medicare, childcare, programs financed entirely with state or local funds.)

Also, benefits used by family members will not be considered in public charge tests made in the U.S. Thus, individuals should not avoid enrolling their children or other family members in public benefits out of concern about the impact on their own immigration status.

Finally, as mentioned above, benefits used prior to the February 24, 2020 effective date will not be considered in public charge tests.

Health Benefits and Public Charge

7. **Under the new rule, could receiving services on a sliding fee discount at a health center impact a person's immigration status?** No. Receiving services or discounts at a health center will never impact a person's immigration status.
8. **Under the new rule, could using Medicaid or SNAP impact someone's immigration status?** There is no simple answer — it depends on several factors, including: the individuals' current immigration status; whether they plan to apply for lawful permanent residency in the near future; their age and pregnancy status; whether the type of Medicaid they use falls under one of the exemptions listed above, etc. etc. See the WHEN/ WHO / WHAT framework above or more information.
9. **Under the new rule, is all Medicaid coverage treated equally in a public charge test?** No. There are five types of Medicaid benefits that are not exempted. This means that Medicaid services provided under one of these exemptions are not considered in any public charge test:
 1. Emergency Medicaid
 2. Medicaid benefits received by a person under 21 years of age
 3. Medicaid benefits received by a woman during pregnancy and for 60 days after
 4. Medicaid benefits received by active duty or Ready Reserve members of the armed forces and their spouses and minor children
 5. Medicaid received while a person was exempt from public charge.
10. **Under the new rule, could having subsidized health insurance purchased through the Marketplace impact an individual's immigration status?** For persons already residing in the US, having federally subsidized health insurance purchased through the Marketplace will not negatively impact an individual's immigration status. However, having insurance purchased through the Marketplace without federal subsidies is considered a "heavily weighted" positive factor.
11. **Under the new rule, could an individual's immigration status be impacted if their child or other family member is enrolled in Medicaid, even if the individual is not enrolled in Medicaid themselves?** No. Benefits received by a child or other family member do not impact an individual's public charge test.

Public Benefits and Totality of Circumstances

12. **Is the use of public benefits, like Medicaid and SNAP, the only factor that USCIS will consider when evaluating a person's LPR application?** No. USCIS will evaluate many other

factors when determining whether to approve a person's LPR application. The final decision will be based on the "totality of the circumstances" for that individual, including their use of public benefits and the other factors.

13. Besides public benefits, what other factors will USCIS look at when evaluating LPR applications?

The USCIS official will also look at the applicant's:

- Age: The USCIS will generally look more positively on people between the ages of 18 – 61 years old than those younger or older.
- Health: The USCIS will look more positively on people who do not have health conditions that could impact their ability to work, attend school, or care for themselves.
- Household size: The applicant's household is defined as anyone who provides 50% or more of the applicant's support, and anyone to whom the applicant provides 50% or more support, including people living outside the US.
- Income: Having a household income that is at least 250% of the Federal Poverty Line is considered a "heavily weighted positive factor." Having an income below 125% FPL is a negative factor.
- Education level: The USCIS will look positively on people who speak English, have a history of employment, a degree or certificate, or who have a history of caretaking. USCIS will look negatively on someone who does not speak English or does not have a high-school diploma (or an equivalent).

14. Will the USCIS official's decision about whether to approve an LPR application be based on just one factor?

No, the decision will be based on the individual's "totality of circumstances". That means that USCIS official will weigh positive factors against negative ones to reach a decision. The regulation does not provide clear guidelines on how factors are to be balanced against each other, so USCIS officials will have significant discretion.

Resources and Next Steps:

14. How can health centers best respond to the new rule?

Health centers are encouraged to educate patients and staff about what the new rule does — and does not— do. Inaccurate information can cause patients to avoid using public benefits, even though using these benefits would have no impact on their and/or their family members' immigration status. Education can help reduce the chilling effect that results from inaccurate information. For messaging tips, see CPCAs talking points located on CPCAs Immigration Resource Page (c pca.org/immigration).

15. Given the complexity of the new rule, is there a tool to assist individuals in determining how the public charge rule will affect them, based on their specific circumstances?

Yes, an on-line Public Charge Assessment tool was created by San Mateo Legal Aid in California. This tool will help immigrants, and those who assist them, understand the current public charge rules. The tools provide a simple guide to understanding if an immigration status may be affected by benefits, when benefits are safe, and when to seek legal advice.

The tool is currently available in English at KeepYourBenefitsCA.org or in Spanish at

TusBeneficiosPublicos.org. This tool is also available via text by texting "Benefits" (for English), "Libre" (for Spanish), Chinese or Vietnamese to 650.376.8006. San Mateo Legal Aid is currently working to expand this tool in other languages. While this tool was designed for residents of California, it is applicable across the US. Also, it does not request any personally-identifiable information.

16. Are there training materials available? Yes. The Protecting Immigrants Access to Public Benefits Workgroup (led by the CA PCA) created a package of train-the-trainer style presentations to help service providers and CBOs discuss public charge with patients and the community. These trainings are referred to as the *Service Provider Trainings and Modules*. Each module includes a script to help guide presenters. All together the modules comprise a full-day workshop, but organizations are encouraged to build a unique agenda that best suits their audience from the menu of modules. This and many other resources can be found on CPCAs Immigration Resource Page at c pca.org/immigration.

17. Where can patients turn for legal advice about public charge? A list of nonprofit organizations that provide free or low-cost immigration legal services is available at <https://www.immigrationadvocates.org/nonprofit/legaldirectory/>

18. Where can health centers get more information?

- The [NACHC](#), [CA PCA](#), [AAPCHO](#), and [PIF](#) immigration websites contain FAQs, training materials, talking points, and much more
- We invite you to participate at the upcoming National Health Center Immigration Workgroup (NHCIW) meeting on February 5th at 12 PST / 3 pm EST where an attorney from the National Immigration Law Center (NILC) will be providing an update on the SCOTUS ruling and current litigation efforts as well as a brief overview of the final rule. To register please click [HERE](#). If you would like to receive timely updates on policy changes occurring in the immigration space, as well as newly available resources, we encourage you to join NHCIW by registering [HERE](#).