Proposed Changes to "Public Charge" Policies for Immigrants: Implications for Health Coverage

Key Takeaways

On September 22, 2018, the Trump Administration announced a proposed rule that would make changes to "public charge" policies. Under longstanding policy, the federal government can deny an individual entry into the U.S. or adjustment to legal permanent resident (LPR) status (i.e., a green card) if he or she is determined likely to become a public charge.

- Under the proposed rule, officials would newly consider use of certain previously excluded programs, including Medicaid, the Supplemental Nutrition Assistance Program, the Medicare Part D Low-Income Subsidy Program, and several housing programs, in public charge determinations.
- The changes would likely lead to broad decreases in participation in Medicaid and other programs among legal immigrant families and their primarily U.S.-born children beyond those directly affected by the changes. Nationwide, over 19 million or one in four (25%) children live in a family with an immigrant parent, and nearly nine in ten (86%) of these children are citizens.
- Decreased participation in these programs would contribute to more uninsured individuals and negatively affect the health and financial stability of families and the growth and healthy development of their children.

Introduction

On September 22, 2018, the Trump Administration announced a proposed rule to make changes to "public charge" policies that govern how the use of public benefits may affect individuals' ability to enter the U.S. or adjust to legal permanent resident (LPR) status (i.e., obtain a "green card"). The preamble to the proposed rule indicates that its primary goal is to ensure that individuals who apply for admission to the U.S. or for adjustment of status are self-sufficient. The preamble also identifies a range of consequences on the health and financial stability of families as well direct and indirect costs associated with the rule. This fact sheet provides an overview of the proposed rule and its implications for health and health coverage of legal immigrant families and their predominantly U.S.-born children.

Whom Would the Proposed Changes Affect?

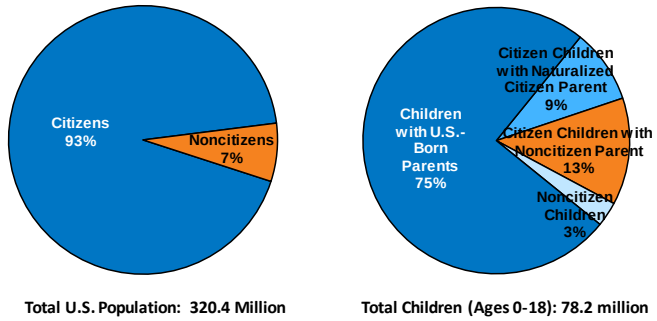
The proposed changes to public charge policies would primarily affect immigrants who are applying for a green card through a family-based petition. The proposed rule would affect lawfully present immigrants seeking to become LPRs or "green card" holders and individuals seeking to immigrate to the U.S.[1] Most individuals seeking to adjust to LPR status or to immigrate to the U.S. are immediate relatives of U.S. citizens or have a family-based sponsor. In 2016, 1.2 million individuals obtained LPR

status, including over half a million who were already present in the U.S.[2] Some immigrants, including refugees and asylees, remain exempt from public charge determinations under law. Public charge policies do not apply to LPRs seeking to obtain citizenship. However, obtaining LPR status is a key step toward citizenship for immigrants seeking naturalization.

The proposed rule would likely increase confusion and fear among all legal immigrant families about using public programs for themselves and their children, regardless of whether they are directly affected by the policy changes. In 2016, there were 23 million noncitizens residing in the U.S. About six in ten noncitizens were lawfully present immigrants, who include LPRs, refugees, asylees, and other individuals who are authorized to live in the U.S.[3] In addition, over 19 million or one in four (25%) children live with an immigrant parent, and nearly nine in ten (86%) of these children are citizens (Figure 1).[4]

Figure 1

Total Population and Children by Citizenship and Parents' Citizenship Status, 2016



SOURCE: Kaiser Family Foundation analysis of March 2017 Current Population Survey, Annual Social and Economic Supplement

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What are the Key Changes in the Proposed Rule?

Under longstanding policy, if authorities determine that an individual is "likely to become a public charge," they may deny that person's application for lawful permanent residence or their entry into the U.S.[5] Certain immigrants, including refugees and asylees, are exempt from public charge determinations under law. In making a public charge determination, officials must consider the totality of the person's circumstances, including, at a minimum, the individual's age; health; family status; assets, resources, and financial status; and education and skills.

Under previous policy clarified in 1999, the federal government specified that it would not consider use of Medicaid, the Children's Health Insurance Program (CHIP), or other non-cash benefits in public charge determinations. Historically, there has been confusion about whether use of Medicaid, CHIP, or other non-cash programs applies in public charge determinations.[6] In 1999, the Immigration and Naturalization Service (now part of the Department of Homeland Security (DHS)) issued guidance that defined a public charge as someone who has become or who is likely to become "primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense."[7] The guidance specified that the federal government would not consider use of Medicaid, CHIP, or other supportive programs in public charge determinations, with the exception of use of Medicaid for long-term institutional care.[8] The guidance noted that this clarification was necessary because ongoing confusion about public charge policies "deterred eligible aliens and their families, including U.S. citizen children,

from seeking important health and nutrition benefits that they are legally entitled to receive. This reluctance to access benefits has an adverse impact not just on the potential recipients, but on public health and the general welfare."[9]

The proposed rule would broaden the programs that the federal government would consider in public charge determinations to include previously excluded health, nutrition, and housing programs. The proposed rule would redefine public charge as an "alien who receives one or more public benefits" and would define public benefits to include cash assistance for income maintenance, government-funded institutionalized long-term care, and certain health, nutrition, and housing programs that were previously excluded from public charge determinations. These programs would include non-emergency Medicaid, the Medicare Part D Low-Income Subsidy Program, the Supplemental Nutrition Assistance Program (SNAP), and several housing programs (see Appendix Table 1). The proposed rule does not include CHIP or subsidies for Affordable Care Act Marketplace coverage as public benefits. DHS specifically requests public comment on whether to include CHIP as a public benefit.

The proposed rule would establish thresholds for use of public benefits to determine an individual to be a public charge. These thresholds would be tied to the value of the benefits received and/or total months a benefit was received. Specifically, for benefits that have a cash value or that can be translated into a cash value (e.g., cash assistance, SNAP, housing vouchers, or rental assistance), the threshold would be 15% of the federal poverty level (FPL) for a single person in a 12-month period ($1,821 as of 2018). For benefits that cannot be translated into a cash value (e.g., Medicaid and public housing), the threshold would be receipt of the benefit for 12 months within a 36-month period or 9 months if an individual receives both types of benefits (i.e., those with a cash value and those without a cash value). Public charge determinations would only consider the value of the benefit going toward the individual and would not take into account benefits received by family members. Public charge determinations would not consider receipt of benefits by active duty or reserve service members or their spouses or children.

The federal government would consider current or recent receipt of public benefits as a heavily weighted negative factor in an individual's public charge determination. As noted, public charge determinations consider the likelihood of an individual becoming a public charge in the future, based on a totality of circumstances. The proposed rule specifies certain factors that immigration officials would consider as positive factors that would decrease the likelihood of an individual becoming a public charge as well as negative factors that would increase the likelihood of someone becoming a public charge. Under the proposed rule, officials would consider current receipt or approval for receipt of a public benefit or receipt of a public benefit within the previous 36 months as a heavily weighted negative factor. Other heavily weighted negative factors related to health and health coverage include having a medical condition that is likely to require extensive treatment or institutionalization and being uninsured and lacking the financial resources to pay for the medical costs associated with the condition.

The proposed rule also outlines policies related to consideration of income as part of public charge determinations. Specifically, DHS would consider whether the individual has annual gross household income of at least 125% of the FPL ($25,975 for a family of three in 2018) and would require

specified levels of household assets and resources if the individual has income below that level. Conversely, having income above 250% of the FPL ($51,950 for a family of three in 2018) would be considered as a heavily weighted positive factor in public charge determinations.

The proposed rule also makes changes related to use of public charge bonds. It outlines policies related to use of public charge bonds that would allow an individual to adjust status if found inadmissible based on a public charge determination and sets the minimum amount of these bonds at $10,000.

What are the Implications for Health & Health Coverage?

Today, Medicaid fills gaps in private coverage for lawfully present immigrants, providing them access to needed care and financial protections that support their ability to work and care for their children. Medicaid provides families access to preventive and primary care, including prenatal care, as well as care for chronic conditions. In addition, the coverage provides families financial protection from high medical costs. By enabling families to meet their health care needs, Medicaid supports families' ability to work and care for their children. The majority of lawfully present immigrants live in a family with at least one full-time worker (83%), a rate equal to that of citizens.[10] However, lawfully present immigrants are more likely than citizens to live in low-income families and often work in jobs and industries that do not offer health coverage. Reflecting their lower incomes and limited access to private coverage, one in four nonelderly lawfully present immigrants has Medicaid or CHIP coverage.[11] However, among the low-income nonelderly population, lawfully present immigrants are less likely than citizens to have Medicaid or CHIP. These lower coverage rates reflect eligibility restrictions for immigrants that require many otherwise eligible lawfully present immigrants to wait five years after obtaining lawful status before they may enroll as well as barriers to enrollment for eligible immigrants, including fear.[12]

The proposed changes would likely lead to broad declines in participation in Medicaid and other programs among immigrant families, including their primarily U.S.-born children. Despite efforts to assure families that Medicaid and CHIP could not be used in public charge determinations under previous policy, many eligible immigrants did not enroll themselves or their children because they feared that it could negatively affect their status. The proposed rule would amplify these fears, which would likely lead to broad falloffs in participation in Medicaid and other programs among a broader group of individuals than those directly impacted by the policy change. Previous research shows that welfare reform had this chilling effect on immigrant families' participation in public programs and suggests that the proposed rule would likely lead to declines in Medicaid/CHIP enrollment among citizen children with a noncitizen parent.[13] Analysis shows that, if Medicaid/CHIP disenrollment rates range from 15% to 35%, an estimated 875,000 to 2 million citizen children with a noncitizen parent could drop Medicaid/CHIP coverage despite remaining eligible. Other recent analysis shows that, prior to announcement of the proposed rule, families were already experiencing growing fears of participation in health, nutrition, and other programs that led them to disenroll or avoid enrolling themselves and their children. The preamble to the proposed rule recognizes that the rule may lead to disenrollment or foregone enrollment in public benefit programs among foreign-born noncitizens as well as U.S. citizens who are members of mixed status households.

Decreased participation in Medicaid/CHIP would increase the uninsured rate among immigrant families, negatively affecting their health and financial stability. Coverage losses would reduce access to care for families, contributing to worse health outcomes. Reduced participation in nutrition and other programs would likely compound these effects. Overall, reduced participation in Medicaid and other programs would negatively affect their health and financial stability and the growth and healthy development of their children, who are predominantly U.S.-born. The preamble to the proposed rule recognizes these and other anticipated impacts. It notes that disenrollment or foregone enrollment in public benefit programs could lead to worse health outcomes, especially for pregnant or breastfeeding women, infants, or children; reduced prescription adherence; increased emergency room use and emergent care due to delayed treatment; increased prevalence of diseases; increased uncompensated care; increased rates of poverty and housing instability; and reduced productivity and educational attainment. Moreover, the preamble to the proposed rule indicates that DHS has determined that the rule may decrease disposable income and increase poverty of certain families and children, including U.S. citizen children. The preamble to the proposed rule also identifies potential impacts on communities, including decreased revenues to health care providers, pharmacies, grocery retailers, agricultural producers and landlords, as well as new direct and indirect costs for individuals and organizations serving immigrant families.

Next Steps

After the proposed rule is officially published in the Federal Register, there will be a 60-day public comment period. Following that comment period and DHS's consideration of the comments, it would issue final regulations and an effective date for the rule. The rule would not be retroactive, meaning that DHS would not consider an individual's use of the previously excluded health, nutrition, and housing programs prior to the effective date established in the final rule in public charge determinations. Substantial outreach efforts would be needed to educate families and stakeholders about the policy changes, which DHS notes will require time and costs for agencies, health care providers, and other individuals and organizations.

Appendix Table 1: Key Differences between Previous and Proposed "Public Charge" Policies		
	Policy Based on 1999 Guidance	**Proposed Rule Announced September 22, 2018**
Definition of Public Charge	An alien who has become or who is likely to become ''primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense.''	Public charge means an alien who receives one or more public benefits.
Public Benefits that May Be Considered for Public Charge Purposes	• SSI • TANF • State/local cash assistance programs • Public assistance for long-term care in an institution (including Medicaid)	• SSI • TANF • Federal, state, or local cash assistance programs • SNAP • Section 8 Housing Voucher Program • Section 8 Rental Assistance • Medicaid (except for emergency Medicaid, certain disability services related to education, and benefits received by foreign-born children of U.S. citizen parents who will be automatically eligible to become citizens) • Medicare Part D Low-Income Subsidy Program • Institutionalized long-term care at government expense • Subsidized public housing DHS requests public comment on whether to include CHIP as a public benefit.
Consideration of Use of Public Benefits in in a Public Charge Determination	• May take into consideration past and current receipt of cash public assistance for income maintenance or institutionalized long-term care. • No weight should be placed on receipt of non-cash benefits or receipt of cash benefits for purposes other than income maintenance. • Cash benefits received by children or other family members should not be attributed to the individual, unless the family member's benefits are the family's sole source of support.	• For cash benefits and benefits that can be translated to a cash value, the benefit exceeds 15% of the FPL for a household of one within a 12-month period. • For benefits that cannot be translated into a cash value, receipt of any benefit for more than 12 months within a 36-month period • When an individual receives both types of benefits, benefits that cannot be translated into a cash value are received for more than 9 months within a 36-month period • Would not consider benefits received by active duty or reserve service members and their families. • Would only consider benefits going to the individual, not those received by family members
Heavily Weighted Negative Factors	Not Specified	• Not a full-time student and is authorized to work, but is unable to demonstrate employment. • Currently receiving or approved to receive one or more public benefits. • Has received one or more public benefits within the prior 36 months. • Has a medical condition that requires extensive treatment or institutionalization and is uninsured and does not have sufficient resources to pay for medical costs related to the condition. • Previously found inadmissible or deportable on public charge grounds.
Heavily Weighted Positive Factors	Not Specified	• Household has financial assets/resources of at least 250% of the FPL • Authorized to work or employed with an income of at least 250% of the FPL

Endnotes

[1] The proposed changes would also affect certain people seeking to extend or adjust their non-immigrant status while in the U.S. The preamble also notes that the proposed rule interprets public charge as it relates to inadmissibility, but not public charge deportability grounds, which will continue to be governed by Department of Justice precedent decisions.

[2] "Table 6. Persons Obtaining Lawful Permanent Resident Status by Type and Major Class of Admission: Fiscal Years 2014 to 2016," *2016 Yearbook of Immigration Statistics*, Department of Homeland Security, https://www.dhs.gov/immigration-statistics/yearbook/2016/table6, accessed February 12, 2018.

[3] Kaiser Family Foundation analysis of the March 2017 Current Population Survey, Annual Social and Economic Supplement.

[4] Kaiser Family Foundation analysis of the March 2017 Current Population Survey, Annual Social and Economic Supplement.

[5] Becoming a public charge may also be a basis for deportation in extremely limited circumstances. "Public Charge Fact Sheet," U.S. Citizenship and Immigration Services, https://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet, accessed February 12, 2018.

[6] This confusion increased after new Medicaid and CHIP eligibility restrictions were imposed on immigrants in 1996. Those restrictions required many lawfully present immigrants to wait five years after obtaining lawful status before they could enroll in Medicaid or CHIP and made some lawfully present immigrants ineligible for coverage. However, they did not change public charge policy.

[7] "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds," Immigration and Naturalization Service, Justice, 64 Fed. Reg. 28689-28693 (March 26, 1999), https://www.gpo.gov/fdsys/pkg/FR-1999-05-26/pdf/99-13202.pdf.

[8] Ibid.

[9] Ibid.

[10] Kaiser Family Foundation analysis of the March 2017 Current Population Survey, Annual Social and Economic Supplement.

[11] Ibid.

[12] Ibid.

[13] Neeraj Kaushal and Robert Kaestner, "Welfare Reform and Health Insurance of Immigrants," Health Services Research, 40(3), (June 2005), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/; Michael Fix and Jeffrey Passel, "Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform 1994-97" (Washington, DC: The Urban Institute, March 1, 1999) https://www.urban.org/sites/default/files/publication/69781/408086-Trends-in-Noncitizens-and-Citizens-Use-of-Public-Benefits-Following-Welfare-Reform.pdf; Namratha R. Kandula, et. al, "The Unintended Impact of Welfare Reform on the Medicaid Enrollment of Eligible Immigrants," Health Services Research, 39(5), (October 2004), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361081/; Rachel Benson Gold, "Immigrants and Medicaid After Welfare Reform," (Washington, DC: The Guttmacher Institute, May 1, 2003), https://www.guttmacher.org/gpr/2003/05/immigrants-and-medicaid-after-welfare-reform.