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

Key Takeaways

A draft version of a proposed rule by the Trump Administration would make changes to “public charge” policies that govern how use of public benefits may affect individuals’ immigration status. This fact sheet provides an overview of the proposed changes and their implications for health and health coverage.

- **Individuals who are determined to be a “public charge” can be denied lawful permanent residence or entry into the U.S., and, in very limited cases, deported.** Under current policy, individuals may be determined a public charge if they rely on or are likely to rely on public cash assistance or government funded long-term institutional care. Current policy does not allow the federal government to consider the use of non-cash benefits, such as health and nutrition programs, in public charge determinations.
- **Under the draft proposed policy, the federal government could consider previously excluded health, nutrition, and other non-cash programs in public charge determinations.** In addition, the changes would newly allow the federal government to take into account use of programs by citizen children and other family members in making a public charge determination.
- **The changes would likely lead to decreased participation in Medicaid, the Children’s Health Insurance Program (CHIP), and other programs among legal immigrant families, including their citizen children.** The primary group affected by the changes would be individuals seeking a green card through a family-based petition. However, the changes would likely increase fear and confusion among all legal immigrant families, leading to decreased participation in health coverage and other programs for themselves and their children. Decreased participation in these programs would contribute to more uninsured and negatively affect the health and financial stability of families as well as growth and healthy development of their predominantly U.S.-born citizen children.

Introduction

A draft version of a proposed rule by the Trump Administration would make changes to “public charge” policies that govern how use of public benefits may affect individuals’ immigration status. This fact sheet provides an overview of the proposed changes and their implications for health and health coverage of legal immigrant families and their predominantly U.S.-born citizen children.

Who 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 draft changes 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 seeking 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 remain exempt from public charge determinations under law, including refugees, asylees, and certain other groups. 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 naturalize.

The proposed changes 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 change. 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. temporarily or permanently.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 U.S.-born citizens.⁴

What is Current Policy for Public Charge Determinations?

Individuals who are determined likely to become a “public charge” can be denied lawful permanent residence or entry into the U.S. Under longstanding policy, if authorities determine that an individual is “likely to become a public charge” (i.e., a person dependent on the government for subsistence), they may deny that person’s application for lawful permanent residence or their entry into the U.S.⁵ Becoming a public charge may also be a basis for deportation in extremely limited circumstances.⁶ Certain immigrants, including refugees and asylees, are exempt from public charge determinations under law.

Under current policy, the federal government does not consider use of Medicaid, CHIP, or other non-cash benefits in public charge determinations. Historically, there has been confusion about whether use of Medicaid or CHIP and other non-cash programs apply in public charge determinations.⁷ In 1999, the Immigration and Naturalization Service (now part of the Department of Homeland Security) issued clarifying guidance specifying that acceptance of cash assistance for income maintenance as well as government funded long-term institutional care may be considered in conjunction with other factors in public charge determinations.⁸ Use of Medicaid, CHIP, or other supportive programs cannot be considered in public charge determinations, with the exception of use of Medicaid for long-term institutional care.⁹ The guidance noted that this clarification was necessary because ongoing confusion about public charge policies has, “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.”¹⁰

Under current policy, use of benefits by family members, including citizen children, is not considered in public charge determinations. The guidance specifies that officers should not attribute cash benefits received by children or other family members to the individual for purposes of making a public charge determination, except in cases in which the family is reliant solely on that assistance.

What are the Proposed Changes to Public Charge Policy?

The draft proposed rule would substantially broaden the programs that the federal government could consider in public charge determinations to include health, nutrition, and other non-cash programs. The draft proposed rule defines a public charge as a person who is dependent on public benefits or likely to become dependent on public benefits at any time. It specifies certain health and nutrition programs as public benefits, including Medicaid, CHIP, and subsidies for Marketplace coverage as well as the Supplemental Nutrition Assistance Program (SNAP) and the Women Infants and Children (WIC) program (Table 1). Cash assistance for income maintenance, including Supplemental Security Income (SSI), the Temporary Assistance for Needy Families (TANFI) program, and state and local general assistance continue to count as public benefits. The draft proposed rule also specifies certain types of assistance that the federal government may not consider in public charge determinations, including emergency disaster relief and school lunch programs.

The draft proposed rule would newly allow the federal government to consider use of benefits by citizen children and other family members in making public charge determinations. The draft proposed rule notes that the federal government may consider whether the individual is receiving any public benefit, has received any benefit within the last two years, and whether dependent family members, including a citizen child, has received benefits. In making a determination, use of public benefits would be considered as part of the totality of an individual's circumstances and weighed against other factors, including age; health; family status; assets, resources, financial status; and education and skills. However, the draft proposed rule notes that current use of public benefits or having received benefits for more than six months within the previous two years would be a heavily weighted negative factor in determinations. Certain health circumstances also would be a heavily weighted negative factor. These would include, for example, an individual having a costly medical condition and being unable to show proof of unsubsidized health insurance or means to pay for treatment without government funds.

What are the Implications for Health and Health Coverage?

Today, Medicaid and CHIP help fill gaps in private coverage for lawfully present immigrants, providing them access to needed care and financial protections that support their ability to work and the growth and healthy development of their children. Medicaid and CHIP provide 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 and CHIP support families' ability to work and promote growth and healthy development of 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.¹¹ 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.¹² However, among the low-income nonelderly population, lawfully present immigrants are less likely than citizens to have Medicaid or CHIP coverage, reflecting [eligibility restrictions for immigrants](#).¹³ Lawfully present immigrants may qualify for Medicaid and CHIP, including the Affordable Care Act (ACA) Medicaid expansion to low-income adults, but many must wait five years after obtaining lawful status before they may enroll. In addition, many eligible lawfully present immigrants are not enrolled due to multiple enrollment barriers, including fear.

Table 1: Key Differences between Current and Draft Proposed “Public Charge” Policies

	Current Public Charge Policy (Based on 1999 Guidance)	Draft Proposed Rule
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.”	A person who is dependent on public benefits. Public benefit means any government assistance in the form of cash, checks or other forms of money transfers, or instrument and non-cash government assistance in the form of aid, services, or other relief, except those benefits specifically excluded.
Consideration of Use of Public Benefits in a Public Charge Determination	<ul style="list-style-type: none"> • 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 	<p>May consider:</p> <ul style="list-style-type: none"> • Whether individual has sought, has received, or is receiving any public benefit • Whether individual has received any public benefit within the last two years • Whether individual has received or is likely to receive any subsidized health insurance
Consideration of Use of Public Benefits by Children and Other Family Members in a Public Charge Determination	<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • May consider whether any dependent family members, including a U.S. citizen child, in the household have received or are receiving any public benefits.
Benefits that May Be Considered for Public Charge Purposes	<ul style="list-style-type: none"> • SSI • TANF • State/local cash assistance programs • Public assistance for long-term care in an institution (including Medicaid) 	<ul style="list-style-type: none"> • SSI • TANF • State/local cash assistance programs • Public assistance for long- and short-term institutionalized care • Any other federal public benefits for purposes of maintaining the individual’s income • Medicaid • CHIP • Premium subsidies for Marketplace coverage • State/local subsidized health insurance • SNAP (formerly, Food Stamps) • WIC • Transportation vouchers or other non-cash transportation services • Housing assistance • LIHEAP energy benefits • Certain educational benefits, including Head Start
Benefits that May NOT Be Considered for Public Charge Purposes	<ul style="list-style-type: none"> • Medicaid and other health insurance and health services (except for institutional long-term care) • CHIP • Nutrition programs, including Food Stamps (now known as SNAP), WIC, the National School Lunch and Breakfast program, and other supplementary and emergency food assistance programs • Housing benefits • Child care services • Energy assistance, such as LIHEAP • Emergency disaster relief • Foster care and adoption assistance • Educational assistance, including Head Start • Job training programs • In-kind community-based programs • State and local programs • Earned cash payments (e.g., Social Security, veteran’s benefits) • “Special purpose” cash benefits or any other non-cash benefit programs 	<ul style="list-style-type: none"> • Emergency or disaster relief • Educational and child care block grants, including public school and school lunch programs • Earned benefits (e.g., Social Security, veteran’s benefits, Medicare) • Services or benefits available to the community as a whole and not to a specific individual • Government loans that require repayment

The proposed changes would likely lead to decreased participation in Medicaid, CHIP, Marketplace coverage, and other programs among immigrant families, including their citizen children. Despite broad efforts to assure the immigrant community that Medicaid and CHIP could not be used in public charge determinations under current policy, many eligible lawfully present immigrants did not enroll themselves or their children because they feared it could negatively affect their status. This policy change would amplify these fears because use of Medicaid and CHIP and other programs could now have negative repercussions on immigration status. Further, the Administration's increased focus on immigration enforcement and restriction has led to [growing fears among legal immigrants](#) about the stability of their status.¹⁴ Increased fears would likely extend beyond individuals directly affected by the policy to the broader immigrant community. Due to increased fears, it is likely that fewer eligible individuals would enroll themselves and their children in health coverage and that individuals who are currently enrolled in programs would disenroll themselves and their children. Participation in nutrition programs, like SNAP and WIC, would also likely decrease.

Decreased participation in Medicaid, CHIP, and Marketplace coverage would increase the uninsured rate among immigrant families, negatively affecting their health and financial stability and the growth and healthy development of their children. Without Medicaid, CHIP, or Marketplace coverage, more lawfully present immigrants would become uninsured, widening the disparity in coverage they already face. As of 2016, 17% of lawfully present immigrants were uninsured compared to 9% of citizens.¹⁵ Coverage losses would lead to reduced access to care for families, contributing to worse health outcomes over time. Moreover, these effects would likely be compounded by reduced participation in nutrition and other support programs. Decreased participation in these programs would negatively affect the financial stability of families and the growth and healthy development of children in these families, who are predominantly U.S. born citizens.

Endnotes

¹ The changes could also affect certain people seeking to extend or adjust their non-immigrant status while in the U.S.

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 “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 Ibid

⁷ 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.

⁸ “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>.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Kaiser Family Foundation analysis of the March 2017 Current Population Survey, Annual Social and Economic Supplement.

¹² Ibid.

¹³ Ibid.

¹⁴ Samantha Artiga and Petry Ubri, Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health, (Washington, DC, Kaiser Family Foundation, December 2017), <https://www.kff.org/disparities-policy/issue-brief/living-in-an-immigrant-family-in-america-how-fear-and-toxic-stress-are-affecting-daily-life-well-being-health/>.

¹⁵ Kaiser Family Foundation, Health Coverage and Care for Immigrants, (Washington, DC: Kaiser Family Foundation, December 2017), <https://www.kff.org/disparities-policy/fact-sheet/health-coverage-of-immigrants/>.