



Public Charge and Immigration Issues

“Public Charge” is a term used by US immigration officials to refer to a person who is considered primarily dependent on the government for subsistence, as demonstrated by either receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense. Where this consideration applies, an immigrant who is found to be “likely . . . to become a public charge” may be denied admission to the US or lawful permanent resident status.

How has the concept of “public charge” changed?

In September 2018, the Trump Administration issued a proposed regulation that changes long-standing rules governing how and whether immigrants can be determined to be a “public charge;” widens the scope of programs considered by the government in making such a determination; and dramatically lowers the bar for refusing admission or denying individuals green cards or US visas on this basis. The concept underpinning this proposed rule may be replicated in other, future proposed rules.

How have these changes been received?

Physician groups were united in expressing deep concern and opposition to the public charge regulation announced by the Administration. The proposed regulation upends decades of settled policy with regard to public charge and would make it much more likely that lawfully present immigrants could be denied green cards or US visas, or even be deported, merely on the basis of seeking needed health services for them and their family, including those for which they are eligible. It is understood that many of the patients served by physicians almost certainly will avoid needed care from their trusted providers, jeopardizing their own health and that of their communities. As a result, the proposed regulation not only threatens patients’ health, but as this deferred care leads to more complex medical and public health challenges, will also significantly increase costs to the health care system and US taxpayers.

How does it affect your patients?

First and foremost, the proposal would make — and has already made — immigrant families afraid to seek programs that support their basic needs. These programs help them stay strong and productive and raise

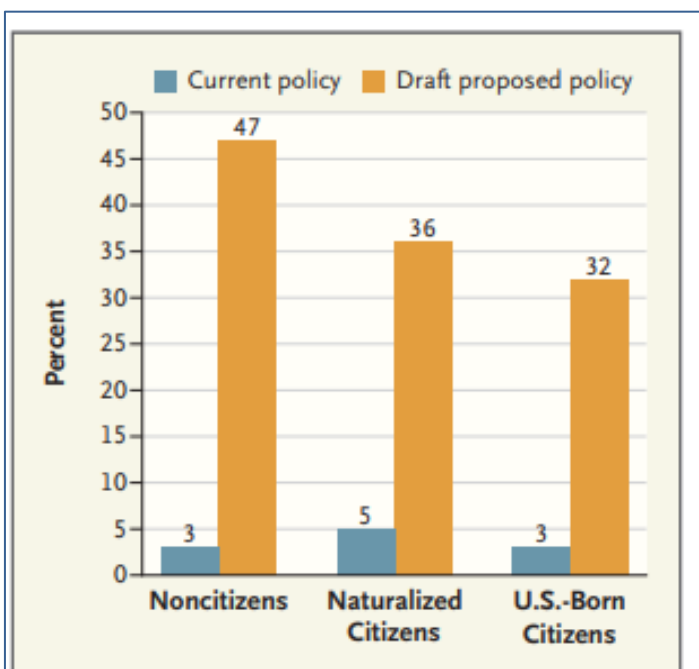


Figure 1. Percentage of Persons for Whom Benefits Use Could Be Considered in a Public-Charge Determination, 2014 through 2016.

The public benefit programs include public cash assistance or welfare from state or local welfare offices, including Temporary Assistance for Needy Families and General Assistance; Supplemental Security Income; Supplemental Nutrition Assistance Program; and Medicaid and the Children's Health Insurance Program. Adapted from Batalova et al.² Reprinted with permission from the Migration Policy Institute.

children who thrive. With about one in four children having at least one immigrant parent, this issue touches millions and is critical now and for our nation's future.

The DHS draft does not change the exemptions from the public charge test for refugees and asylees, victims of domestic violence/human trafficking, and certain other applicants for lawful permanent residence; this proposal does not apply to them

The proposed changes do not apply to lawful permanent residents applying for citizenship ("naturalization")

The proposed changes do not apply to deportation proceedings; lawful permanent residents will not be deportable for receiving public benefits (except in extremely rare circumstances).

The DHS draft focuses on and re-defines the "totality of circumstances" factors (age, health, family status, assets, resources, financial status, education, and skills) for the public charge test; these are defined as *positive* or *negative* factors, and will be considered for EVERY applicant for lawful permanent residence (green cards), *regardless of whether the applicant has received any public benefits*. According to the DHS

draft, the current receipt of any public benefit (as defined in the proposed regulation) will be a "heavily weighted negative factor" in the totality of circumstances public charge test (page 211).

Currently, only receipt of cash public benefits – Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), and General Assistance (GA) – or receipt of government-paid long-term institutional care – triggers the public charge test.

Previous DHS drafts have proposed adding as negative factors:

- The Supplemental Nutrition Assistance Program (SNAP);
- Housing and Urban Development (HUD) Section 8 housing assistance;
- Living in HUD public housing in addition to government-paid long-term care, *for more than 12 out of the past 36 months* – or 9 months if any "monetized" public benefit also was received during that 36-month period;

- The receipt of “non-monetized” public benefits such as Medicaid (except emergency Medicaid, Medicaid payment related to education of disabled children, and Medicaid for non-US citizen children of US citizen parents), Medicare Part D prescription drug plan premium and cost-sharing subsidies;
- The “monetized value” of SSI, TANF, GA, SNAP, and Section 8 housing benefits received by an applicant *in the past 12 months* is more than 15 percent Federal Poverty Guidelines (FPG) for a one-person household, i.e., the applicant (\$1,821 under the 2018 FPG);
- If the applicant’s income is below 125 percent FPG (for the applicant’s entire household). (A heavily weighted positive factor will be showing income at least 250 percent of the FPL for the applicant’s entire household.); and
- Being under age 18 or age 62 and older will be a negative factor.

“Health” will also be a factor in the totality of circumstances test: a heavily weighted negative factor will be if the applicant “has any physical or mental condition that, although not considered a condition or disorder that would render the alien inadmissible under the health-related ground of inadmissibility, is significant enough to interfere with the person’s ability to care for him- or herself or to attend school or work, or that is likely to require extensive medical treatment or institutionalization in the future.”

While previous DHS drafts request public comment on whether the Children’s Health Insurance Program (CHIP) should be added to this list of non-monetized public benefits that receipt would be a negative factor and the Supplemental Nutrition Assistance Program for Women, Infants, and Children (WIC), Affordable Care Act marketplace subsidies, low-income energy assistance, the Earned Income Tax Credit (EITC) and other government programs are NOT on the list of public benefits that would be considered for public charge in the DHS draft, there is potential for these to be included in future proposed regulations. That includes other state and local programs.

As a matter of practice, most applicants meet the public charge test with an affidavit of support from a “sponsor.”

How does it affect family and primary care physicians and what can they do?

Family and primary care physicians’ first role relative to the issue of public charge will be patient education.

Should restrictive new rules come into force, family physicians should:

- Ensure that immigrant patients know of potential effects of public charge policy on immigration status.
- Ensure that patients know that only services received by the individual – and not by family members – is considered.
- Become involved with your local, state, and federal professional association and/or specialty society to ask how you can contribute to advocacy efforts to block or overturn regulations that prevent access to care.
- Ensure that patients know that most applicants meet the public charge test with an affidavit of support from a “sponsor.”
- Consult an immigration attorney or BIA-accredited representative about their individual case. This online directory can help you search for local nonprofits that provide legal help and advice: www.immigrationlawhelp.org.

- Familiarize yourself with the [Center for Law and Social Policy’s \(CLASP\) How to Talk About Public Charge with Immigrants and Their Families](#) document.
- Familiarize yourself with the [National Immigration Law Center’s “Know Your Rights, Know Your Patients’ Rights”](#) document, which includes information about when and how to interact with immigration enforcement officials.

Additional Resources

[Joint Statement of America’s Frontline Physicians Opposing Public Charge Proposal](#)

[CMA statement on proposed policy linking safety net benefits and immigration status](#)

[AMA Statement on Linking of Safety Net Benefits to Immigration Status](#)

[A New Threat to Immigrants’ Health — The Public-Charge Rule \(NEJM\)](#)

<https://www.nejm.org/doi/pdf/10.1056/NEJMp1808020>

https://www.clasp.org/sites/default/files/publications/2018/04/2018_publiccharge.pdf

https://www.clasp.org/sites/default/files/publications/2018/08/2018_piftalkingwithimmigrantfamilies.pdf

<https://www.nilc.org/wp-content/uploads/2017/04/Protecting-Access-to-Health-Care-2017-04-17.pdf>



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