



## **Public Charge and Immigration Issues (Updated October 2019)**

“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. Application for or use of certain public benefits is just one factor of many that is considered in determining if a person is likely to become a public charge.

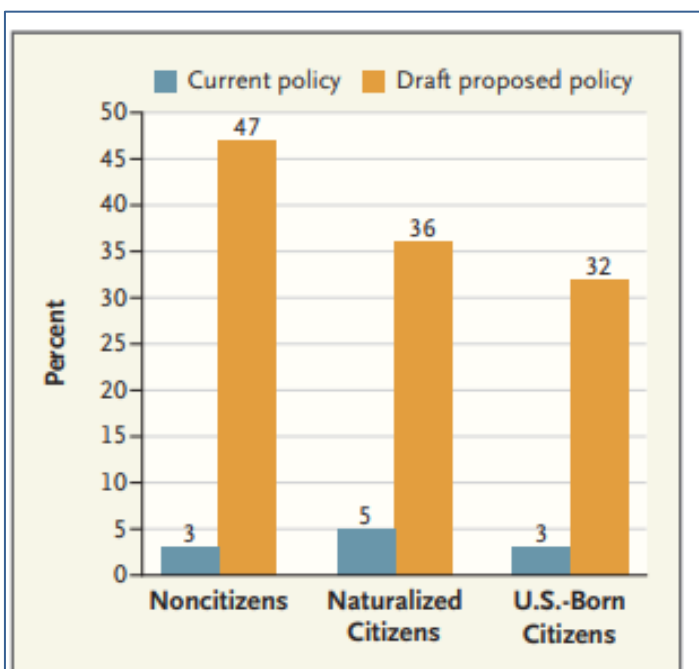
### **How has the concept of “public charge” changed?**

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. In August of 2019, the Federal Government released its finalized public charge policy, which redefined a public charge as an immigrant who receives one or more public benefits for more than 12 months over a 36- month period. The federal policy change will go into effect on October 15, 2019, unless its implementation is prevented by legal challenge.

### **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?**



**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.<sup>2</sup> Reprinted with permission from the Migration Policy Institute.

First and foremost, the policy has already made immigrant families afraid to seek programs that support their basic needs. These programs help them stay strong and productive and raise 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 policy 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, to lawful permanent residents applying for citizenship ("naturalization"), to deportation proceedings, or to lawful permanent residents.

The policy 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).

Benefits, other than cash assistance and long-term care services, used before October 15, 2019, will not be considered in public charge determinations.

#### What programs are included in public charge consideration?

- CalWORKs or TANF
- CalFresh or SNAP
- Medi-Cal or Medicaid (Adults +21 Only)
- In-Home Supportive Services (Adults +21 Only)
- Supplemental Security Income

## What programs are NOT included?

Immigrants in the following situations are NOT affected by the new policy:

- Public programs are used by an immigrant’s children, who are United States citizens.
- If an immigrant is only receiving nutrition benefits through the Women, Infants, and Children Program or WIC.  
If an immigrant is only receiving subsidies for health insurance coverage through Covered California.
- If an immigrant is under the age of 21 and only receiving Medi-Cal benefits
- If an immigrant is a pregnant woman, or within 60 days following the birth of a child, and only receiving Medi-Cal benefits.
- If an immigrant is only covered for emergency medical services as part of Medi-Cal.

The Federal Government will only consider public benefits received directly by the person who is applying for the change in status, or if they’re listed as a beneficiary. This means that your family members accessing public programs will have no impact on you.

“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.”

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](http://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**

[California Health and Human Services Agency Public Charge Guide](#)

[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/2018/04/2018_publiccharge.pdf)

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