



# How Proposed Changes to Public Charge Would Impact Children in Immigrant Communities

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## Fact Sheet in Brief

*The Department of Homeland Security (DHS) issued a proposed regulation that would radically change U.S. immigration policy. This fact sheet explains the proposed rule, focusing on how the changes would impact children's health coverage.*

## Introduction

The Department of Homeland Security (DHS) issued a proposed regulation that would radically change U.S. immigration policy. The changes would ripple through nearly every aspect of the lives of the over ten million citizen children with noncitizen parents, including health care, nutrition, and housing. This fact sheet explains the proposed rule, focusing on how the changes would impact children's health coverage. Over the last few decades, Medicaid policies have been improved to make it easier for children – including lawfully residing immigrant children – to get and stay covered, helping us reach historic coverage levels of over 95 percent. These coverage gains are already at risk, and the proposed rule to radically redefine what constitutes public charge would surely lead to a backslide.<sup>1</sup> Children with health coverage are more likely to become healthy adults and achieve greater academic and economic success<sup>2</sup>, but this proposed rule

would jeopardize those opportunities for children in immigrant communities.

## What is Public Charge?

Public charge is a term used in U.S. immigration law to refer to a person who is likely to become dependent on the government for financial and material support. An immigrant who is deemed likely to become a public charge may be denied admission to the U.S. or unable to adjust their status to become a lawful permanent resident (LPR) or green card holder.<sup>3</sup>

Public charge determinations are based on a totality of the circumstances test. Various factors such as the applicant's age, health, family status, financial status, and education and skills are all taken into consideration when deciding whether the applicant is likely to be primarily dependent on the government. No single factor is dispositive; all factors must be considered together. The totality of the circumstances test is prospective, meaning that the decision cannot be based only on what happened in the past.

On October 10, 2018, DHS issued a notice of proposed rulemaking (NPRM) called *Inadmissibility on Public Charge Grounds* to radically expand the scope and nature of the public charge test.<sup>4</sup> Before the proposed changes can go into effect, the Department must review public comments and issue a final rule that takes those public comments into consideration. Comments to the public charge NPRM must be submitted to DHS by December 10, 2018.<sup>5</sup>

# How Does the Proposed Rule Compare to Current Law?

If finalized, the rule would make it far more difficult to immigrate to the U.S. or become an LPR by:

## 1. APPLYING THE PUBLIC CHARGE TEST MORE OFTEN

Under current law, a public charge assessment is made when a person applies to enter the U.S. or adjust their status to obtain a green card, but under the proposed rule, a public charge assessment would be made in two additional circumstances: when a person applies to extend a current visa or change visa types. By applying the test more often, more legal immigrants will be subject to the public charge test. For example, a person with a student visa applying for an employment visa would be newly subject to the public charge test under the proposed rule.

### CURRENT LAW:

- Individuals seeking to legally enter the U.S.
- Individuals legally in the U.S. seeking to become an LPR/obtain a green card

### PROPOSED RULE:

- Individuals seeking to legally enter the U.S.
- Individuals legally in the U.S. seeking to become an LPR/obtain a green card
- Individuals legally in the U.S. seeking to extend a current visa
- Individuals legally in the U.S. seeking to change visa types

Assistance Program (SNAP), and housing assistance (Section 8 Housing Choice Vouchers, Section 8 Project-Based Rental Assistance, and Subsidized Housing under the Housing Act of 1937). By expanding the list of benefits considered when making a public charge assessment, many more immigrant families, especially those with low to moderate incomes, could be considered a public charge.

### CURRENT LAW:

- Cash Assistance (SSI, TANF, other cash benefit programs)
- Institutional long-term care (Medicaid nursing home care)

### PROPOSED RULE:

- Cash Assistance (SSI, TANF, other cash benefit programs)
- Institutional long-term care (Medicaid nursing home care)
- Non-emergency Medicaid
- Medicare Part D LIS
- SNAP
- Housing Assistance

## 2. EXPANDING THE LIST OF PUBLIC BENEFITS CONSIDERED TO INCLUDE BENEFITS SUCH AS MEDICAID AND SNAP

Under current law, the applicant's use of two types of public benefits may be considered – cash assistance (such as Supplemental Security Income (SSI) and Temporary Assistance for Needy Families (TANF)) and institutional long-term care (such as Medicaid coverage of nursing home care). The proposed rule would expand the list of benefits considered to add non-emergency Medicaid<sup>6</sup>, the Medicare Part D Low Income Subsidy (LIS), the Supplemental Nutrition



### 3. LOWERING THE THRESHOLD FOR PUBLIC CHARGE FROM PRIMARILY DEPENDENT ON TO LIKELY TO RECEIVE A PUBLIC BENEFIT

Under current law, a public charge is defined as a person who is or is likely to become *primarily dependent* on public benefits. Under the proposed rule, the definition would be broadened substantially to include a person who is or is likely to *receive one or more* public benefits.

Exactly how past use of benefits would be taken into consideration under the proposed rule is unclear. The proposed rule sets out a complex system of categorizing benefits into two groups – monetizable and non-monetizable – and then sets thresholds for each (see Figures 1 and 2). However, in describing the factors, the proposed rule includes as evidence of the individual’s assets, resources, and financial status consideration of whether the individual has *applied for or been certified or approved to receive* public benefits. For programs with integrated applications or automatic application processes, it may be impossible for applicants to know whether they have ever applied for or been approved to receive benefits yet this could be counted against them. For example, the Children’s Health Insurance Program (CHIP) and premium tax credits are not included in the proposed rule (though DHS is specifically seeking comment on whether CHIP should be included) but applicants for CHIP or Marketplace coverage are automatically screened for Medicaid eligibility, which is counted.

For many families with low-wage workers, total work hours spike and dip unpredictably, causing fluctuations in income. Cash assistance, SNAP, and housing programs are designed to help maintain family stability during these ups and downs. Low-wage workers are also more likely to work for companies that do not provide health coverage, making Medicaid a critical work support to keep workers and their families healthy and financially secure.<sup>7</sup> By expanding the list of benefits considered, families will be less likely to use all benefits, even when they are needed.



#### CURRENT LAW:

- An individual may be considered to be or likely to become a public charge if (s)he is primarily dependent on public benefits

#### PROPOSED RULE:

- An individual may be considered to be or likely to become a public charge if (s)he receives one or more public benefits

**Figure 1. Monetizable and Non-Monetizable Benefits under Proposed Rule**

 Monetizable benefits tied to a dollar amount threshold	 Non-monetizable benefits tied to a durational threshold
<ul style="list-style-type: none"> <li>• Cash Assistance                             <ul style="list-style-type: none"> <li>• SSI</li> <li>• TANF</li> <li>• Other cash benefit programs</li> </ul> </li> <li>• SNAP</li> <li>• Housing Assistance                             <ul style="list-style-type: none"> <li>• Housing vouchers</li> <li>• Rental assistance</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Medicaid                             <ul style="list-style-type: none"> <li>• Institutional long-term care</li> <li>• Non-emergency Medicaid</li> </ul> </li> <li>• Medicare Part D LIS</li> <li>• Housing Assistance                             <ul style="list-style-type: none"> <li>• Public housing</li> </ul> </li> </ul>

**Figure 2. Public Benefit Thresholds under Proposed Rule**

<i>Dollar Limit</i>	<i>Duration Limit</i>	<i>Combination</i>
1 or more benefit(s) with a cumulative value of > 15% FPL for any consecutive 12-month period, about \$1,800/year regardless of family size	1 or more benefit(s) for an aggregate of > 12 months within a 36-month period (2 benefits in 1 month = 2 months)	1 or more monetizable benefit(s) < 15% FPL for any 12-month period  AND  1 or more non-monetizable benefit(s) > 9 months with a 36-month period

## 4. IMPOSING A SPECIFIC INCOME RULE

An individual's assets, resources, and financial status are considered as part of the totality of the circumstances test under current law. *However, the proposed rule would impose a specific income test of at least 125 percent of FPL for the first time.*

In other words, a family of three would need to earn at least \$25,975 to pass the income test. Income and assets below 125 percent of FPL would be a negative factor in the totality of the circumstances test. On the other hand, income and assets of at least 250 percent of FPL would be a heavily-weighted positive factor. Income and assets between 125 and 250 percent of FPL would be neither negative nor positive, making the other factors more important.

The vast majority of children covered by Medicaid and CHIP are in families with income below 250 percent of FPL.<sup>8</sup> Imagine a family of three with one parent and two children. If the parent works full-time at minimum wage, that would amount to about \$15,080 in earnings for the year, or roughly 73 percent of FPL, far below the \$25,975 needed to pass this new income test.

### CURRENT LAW:

- Assets, resources, and financial status are one factor of the totality of the circumstances test

### PROPOSED RULE:

- Assets, resources, and financial status are one factor of the totality of the circumstances test
- Income below 125% FPL is a negative factor
- Income above 250% FPL is a heavily-weighted positive factor
- Income between 125-250% FPL is neither negative nor positive

## Implications of the Proposed Changes to Public Charge

### IMMIGRATION IMPLICATIONS

The proposed rule seeks changes in immigration law and policy that would have the effect of shifting the U.S. immigration system from favoring family unity to one that favors wealth above all else. Fewer lawfully residing immigrant children will be able to obtain green cards and fewer children living abroad in low- to moderate-income families will be permitted to immigrate. Moreover, fewer citizen children in mixed status families will see their parents obtain green cards, jeopardizing their ability to stay together in the U.S. as a family.

### HEALTH IMPLICATIONS

The proposed rule would substantially deter families from using public benefits because the list of public benefits considered is much longer, the proposed rules are incredibly complex, and the ultimate outcome of the public charge test is difficult to predict. This fear will extend beyond the individual immigrant subject to the public charge test and impact the entire family and community through what is known as the chilling effect. In 2016, over ten million citizen children, or one in seven children living in the U.S., had at least one noncitizen parent.<sup>9</sup> According to the Kaiser Family Foundation, the proposed rule could lead to between 2.1 and 4.9 million Medicaid/CHIP beneficiaries disenrolling, including immigrant children and parents as well as citizen children of immigrant parents, due to increased fear and confusion.<sup>10</sup> Research shows that children with health coverage are more likely to become healthy adults and have greater academic and economic success.<sup>11</sup> Moreover, when even one member of the family is uninsured, it undermines the financial security of the whole family.<sup>12</sup> The proposed rule would undo decades of work to ensure all children have coverage, jeopardizing their futures.

## Endnotes

- 1 Pham, O., Georgetown University Center for Children and Families, New Census Data Reveal Troubling Signs for Children’s Health Coverage (September 2018), available at <https://ccf.georgetown.edu/2018/09/14/new-census-data-reveal-troubling-signs-for-childrens-health-coverage/>.
- 2 Wagnerman, K., Chester, A., and Alker, J., Georgetown University Center for Children and Families, Medicaid is a Smart Investment in Children (March 2017), available at <https://ccf.georgetown.edu/wp-content/uploads/2017/03/MedicaidSmartInvestment.pdf>.
- 3 Puhl, E., Quinn, E., and Kinoshita, S., Immigration Legal Resource Center, An Overview of Public Charge (August 2018), available at [https://www.ilrc.org/sites/default/files/resources/overview\\_of\\_public\\_charge-20180808.pdf](https://www.ilrc.org/sites/default/files/resources/overview_of_public_charge-20180808.pdf).
- 4 The text of the NPRM can be downloaded at <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>.
- 5 To submit a comment electronically, go to <https://www.regulations.gov/document?D=US-CIS-2010-0012-0001>.
- 6 The NPRM proposes to include Medicaid except for emergency Medicaid, school-based Medicaid benefits, Medicaid benefits under the Individuals with Disabilities Education Act, and Medicaid for children of U.S. citizens with citizenship pending. It is unclear how some of these exclusions could be operationalized.
- 7 Searing, A., Georgetown University Center for Children and Families, State Medicaid Work Rules Ignore the Reality of Working Life for Americans in Low Wage Jobs (March 2018), available at <https://ccf.georgetown.edu/2018/03/16/state-medicaid-work-rules-ignore-the-reality-of-working-life-for-americans-in-low-wage-jobs/>.
- 8 Medicaid and CHIP Payment and Access Commission, CHIP Eligibility, available at <https://www.macpac.gov/subtopic/eligibility-2/>.
- 9 Artiga, S., Damico, A., and Garfield, R., Kaiser Family Foundation, Potential Effects of Public Charge Changes on Health Coverage for Citizen Children (May 2018), available at <https://www.kff.org/disparities-policy/issue-brief/potential-effects-of-public-charge-changes-on-health-coverage-for-citizen-children/>.
- 10 Kaiser Family Foundation, Proposed Changes to “Public Charge” Policies for Immigrants: Implications for Health Coverage (September 2018), available at <https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/>.
- 11 Wagnerman, K., Chester, A., and Alker, J., Georgetown University Center for Children and Families, Medicaid is a Smart Investment in Children (March 2017), available at [tent/uploads/2017/03/MedicaidSmartInvestment.pdf.  
12 Wagnerman, K., Georgetown University Center for Children and Families, Medicaid: How Does it Provide Economic Security for Families? \(March 2017\), available at <https://ccf.georgetown.edu/2017/03/09/medicaid-how-does-it-provide-economic-security-for-families/>.](https://ccf.georgetown.edu/wp-con-</a></li></ol></div><div data-bbox=)

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