



How the New Public Charge Rule Impacts Children in Immigrant Communities

by *Kelly Whitener*

Executive Summary

- The final “public charge” rule changes immigration law and policy in ways that will shift the U.S. immigration system from favoring family unity to favoring wealth above all else. Fewer lawfully residing immigrant children will be able to obtain green cards, and fewer children in low- to moderate-income families will be granted admission. Moreover, fewer citizen children in mixed-status families will see their parents obtain green cards, jeopardizing their ability to stay together in the United States as a family.
- Despite the fact that use of benefits by children or other family members will not count against the applicant, the complexity of the public charge rules and the anti-immigrant political climate has already deterred families from using needed benefits through what is known as the “chilling effect.” Even before the final rule was published, children in immigrant families and communities expressed fear and confusion about the rules and disenrolled as a precautionary measure. Without the support of SNAP and Medicaid, families are more likely to face food insecurity, skip needed medical treatment and preventive care, and experience financial and emotional hardship.
- Research shows that children with health coverage are more likely to become healthy adults and have greater academic and economic success. Moreover, when even one member of the family is uninsured, it undermines the financial security of the whole family. The chilling effect of the final rule has the potential to undo decades of work to ensure all children have coverage, jeopardizing their futures.

Notice for Immigrant Families: Use of benefits by family members will not count against the applicant. Children may continue to use Medicaid and CHIP without penalty.

If you are worried about how these changes will impact you or someone you know, go to <https://protectingimmigrantfamilies.org/> and review [Public Charge: Getting the Help You Need](#). You may also benefit from speaking to an immigration law expert. To find a free or low-cost option near you, go to <https://www.immigrationadvocates.org/nonprofit/legaldirectory/>.

The Department of Homeland Security (DHS) issued a final regulation that will radically change U.S. immigration policy beginning October 15, 2019, unless the rule is blocked by pending legal challenges. The changes will also impact use of important family supports, such as health care, nutrition, and housing. This fact sheet explains the final “public charge” rule, focusing on how the changes would impact children’s health.

Over the past few decades, Medicaid policies have been improved to make it easier for children – including lawfully residing immigrant children – to get and stay covered, helping the United States reach historic coverage levels. Children with health coverage are more likely to become healthy adults and achieve greater academic and economic success.¹ However, in 2017, the rate of uninsured children increased for the first time in almost a decade, reaching 5 percent.² Early signs point to an even larger increase in the uninsured rate in 2018, given the unprecedented decline of almost 1 million children in Medicaid and Children’s Health Insurance Program (CHIP) enrollment.³

This public charge rule would further reduce enrollment among children in immigrant communities through what is known as the “chilling effect,” under which families decline to enroll eligible children due to the resulting fear and confusion. This is true even though the rule does not count a child’s health benefits against their parent’s application.

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 primarily 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 country or unable to adjust their status to become a lawful permanent resident (LPR) or green card holder.⁴

Public charge inadmissibility 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, but rather all factors must be considered together. The totality of circumstances test is prospective, meaning that the decision cannot be based only on what happened in the past.

On August 14, 2019, the Department of Homeland Security (DHS) issued a final rule called [Inadmissibility on Public Charge Grounds](#) to radically expand the scope and nature of the public charge test for individuals applying for admission or adjustment of status.⁵ The changes are slated to go into effect on October 15, 2019, though several [lawsuits](#), including from a group of state attorney generals, have already been filed to block the rule.

Who Is Subject to the Public Charge Inadmissibility Test? When Does it Apply?

The public charge inadmissibility test applies to individuals seeking admission and adjustment of status to legal permanent residency. It is important to remember that not all immigrants are subject to the public charge inadmissibility test. For example, the test does not apply to: refugees; asylees; survivors of domestic

violence, trafficking, or other serious crimes; juveniles who have been abused, neglected, or abandoned by a parent; and other categories of noncitizens.⁶ Additionally, the public charge inadmissibility test does not apply to citizens or green card holders applying for citizenship. The new final rule will have the most direct impact on legal immigrants who are seeking permanent status (LPR) through family member petitions.

How Does the Final Rule Change Prior Law?

The new final rule would make it far more difficult to gain admission to the United States or become an LPR by:

- Lowering the threshold for public charge from an immigrant who is primarily dependent on public benefits to an immigrant who receives one or more public benefits for more than 12 months in any 36-month period;
- Expanding the list of public benefits considered to include benefits such as Medicaid and the Supplemental Nutrition Assistance Program (SNAP); and
- Changing the totality of the circumstances test to include new negative and positive factors such as a specific income test.

Lowering the threshold

Under prior law, a public charge was defined as a person who was or was likely to become primarily dependent on public benefits. Under the new final rule, the definition would be broadened substantially to include a person who receives one or more public benefits for more than 12 months in the aggregate within any 36-month period.

If a person receives two benefits in one month, such as Medicaid and SNAP, it would count as

two of the 12 months. But, only those benefits received by the applicant herself would count; other people in the applicant's family could continue to use benefits for which they qualify without a penalty. For example, parents seeking permanent status could enroll their citizen children in Medicaid, and the children's use of Medicaid would not count against the parent when applying for a green card.

PRIOR LAW

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

FINAL RULE

An individual may be considered to be or likely to become a public charge if (s)he receives one or more public benefits for more than 12 months in any 36-month period

Expanding the list of public benefits considered

Under prior law, the applicant's use of only two types of public benefits were considered when making public charge inadmissibility determinations – 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 new final rule would expand the list of benefits considered to add the Supplemental Nutrition Assistance Program (SNAP), housing assistance (Section 8 Housing Choice Vouchers, Section 8 Project-Based Rental Assistance and Subsidized Housing under the Housing Act of 1937), and Medicaid with some critical exceptions.

While Medicaid services would generally count as receipt of a public benefit under the final rule, there are some important exceptions⁷:

- Children and Adolescents: Medicaid benefits received by children and adolescents under 21 years of age will not count in a public charge inadmissibility test.
- Pregnant Women: Medicaid benefits received by women during pregnancy and in the 60-day postpartum period will not count in a public charge inadmissibility test.
- Emergency Medicaid: Medicaid benefits received by individuals in emergency situations, such as hospital services for an acute medical emergency, will not count in a public charge inadmissibility test.

Therefore, lawfully residing children and pregnant women eligible for Medicaid within their first five years through state adoption of the [Immigrant Children’s Health Improvement Act](#) (as well as lawfully residing children and pregnant women eligible for Medicaid after five years in all states) can continue to enroll in Medicaid without penalty. In addition, CHIP is not included as a public benefit under the final rule.

For many families with low-wage workers, total

PRIOR LAW
<ul style="list-style-type: none"> • Cash assistance (SSI, TANF, other cash benefit programs) • Institutional long-term care (Medicaid nursing home care)
FINAL RULE
<ul style="list-style-type: none"> • Cash assistance (SSI, TANF, other cash benefit programs) • SNAP food assistance • Housing assistance • Medicaid health coverage (see exceptions above)

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.⁸ By expanding the list of benefits considered, more families could be considered public charges. However, given limited benefit eligibility for noncitizens and the exceptions for Medicaid services for children and pregnant women, families are more likely to face barriers to admission and permanent status due to changes in the totality of circumstances test.

Changing the totality of the circumstances test

The Immigration and Nationality Act requires consideration of five factors when making a public charge inadmissibility determination: age; health; family status; assets, resources and financial status; and education and skills. These five factors are part of what is known as the totality of the circumstances test. Each factor must be considered, and positive factors are weighed against negative factors. The final rule adds “evidence” of these factors and assigns some heavy positive and negative weights. Though no single factor is dispositive, children generally will be less likely to pass the totality of the circumstances test because simply being under age 18 is considered a negative factor.

Importantly, the final rule adds a specific income test as evidence of an individual’s assets, resources, and financial status. Income and assets below 125 percent of the federal poverty level (FPL) is a negative factor, and income and assets of at least 250 percent of FPL is a heavily-weighted positive factor. 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 70 percent of FPL, far below the \$26,663 needed to pass this new

income test.

In addition to this specific income test, the final rule lists application for, receipt of, and disenrollment from public benefits as evidence of insufficient financial resources. Prior use of listed public benefits is a negative factor, and prior use for more than 12 months in the aggregate within any 36-month period is a heavily-weighted negative factor. As noted above, many immigrants applying for admission or permanent residency are either ineligible for public benefits or fall under one of the listed exceptions for the public charge inadmissibility test.

But, because the totality of the circumstances test is prospective, even those immigrants who have not used public benefits in the past or are ineligible for public benefits in the present may be found inadmissible or denied permanent status if they are considered likely to receive

public benefits in the future. Because public benefits such as Medicaid and SNAP have income-based eligibility rules, individuals with lower incomes will be considered more likely to receive these benefits in the future, making it harder for them to pass the totality of the circumstances test. For example, 97 percent of children covered by Medicaid and CHIP are in families with income below 250 percent of FPL.⁹

Additionally, children with disabilities and special health care needs will be less likely to pass the totality of the circumstances test if they have a condition likely to require extensive medical treatment or interfere with their ability to attend school is a negative factor under the rule. Having such a condition combined with a lack of private insurance is a heavily-weighted negative factor under the final rule. Yet nearly half of children with special health care needs rely on Medicaid.

In 2017, over 18 million children, or one in four

Changes to the Totality of the Circumstances Test Impacting Children

Age	 Under age 18
Health	 Medical condition that will interfere with ability to attend school
	 Medical condition that will interfere with ability to attend school and no private health insurance
Family status	 Large household size
Assets, resources, and financial status	 Family income below 125 percent of FPL
	 Family income above 250 percent of FPL
	 Past application for or receipt of listed public benefits
	 Prior receipt of listed public benefits for more than 12 months in the aggregate in any 36-month period
	 Covered by private, nonsubsidized health insurance
Education and skills	 Lack of IRS wage data, credit history, and high school diploma
	 Proficiency in English

Implications of the Changes to the Public Charge Grounds for Inadmissibility

U.S. children lived with at least one immigrant parent.¹⁰ The vast majority of these children (88 percent) are U.S. citizens.

Immigration Implications

The final rule changes immigration law and policy in ways that will have the effect of shifting the U.S. immigration system from favoring family unity to favoring wealth above all else. Fewer lawfully residing immigrant children will be able to obtain green cards, and fewer children in low- to moderate-income families will be granted admission. 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

Not all immigrants are subject to the public charge grounds for inadmissibility test. Of those immigrants who are subject to the test, most are either ineligible for Medicaid or fall into one of the exempted groups, such as children and pregnant women. Additionally, use of benefits by family members will not count against the applicant. Therefore, eligible children will be able to continue to use Medicaid and CHIP without any direct impact under the rule.

However, the complexity of the “public charge” rule and the overall anti-immigrant political climate has already deterred families from using needed benefits through what is known as the “chilling effect.” Even before the final rule was published, children in immigrant families and communities expressed fear and confusion about the rules and disenrolled as a

precautionary measure. About 7.6 million children with Medicaid/CHIP live in a household with a noncitizen or are noncitizens themselves and may be at risk of losing health coverage as a result of the rule.¹¹ Without the support of SNAP and Medicaid, families are more likely to face food insecurity, skip needed medical treatment and preventive care, and experience financial and



One in four U.S. children lived with at least one immigrant parent.

emotional hardship.¹²

Research shows that children with health coverage are more likely to become healthy adults and have greater academic and economic success.¹³ Moreover, when even one member of the family is uninsured, it undermines the financial security of the whole family.¹⁴ The chilling effect of the final rule has the potential to undo decades of work to ensure all children have coverage, jeopardizing their futures.

Endnotes

- 1 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>.
- 2 Alker, J. and Pham, O., Georgetown University Center for Children and Families, Nation's Progress on Children's Health Coverage Reverses Course (November 2018), available at <https://ccf.georgetown.edu/2018/11/21/nations-progress-on-childrens-health-coverage-reverses-course/>.
- 3 Brooks, T., Park, E., and Roygardner, L., Georgetown University Center for Children and Families, Medicaid and CHIP Enrollment Decline Suggests the Child Uninsured Rate May Rise Again, (May 2019), available at <https://ccf.georgetown.edu/2019/05/28/medicaid-and-chip-enrollment-decline/>.
- 4 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.
- 5 The text of the final rule can be found at <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>.
- 6 See Public Charge: Getting the Help You Need for more information about which groups are subject to the public charge inadmissibility test, available at <https://protectingimmigrantfamilies.org/wp-content/uploads/2019/08/Getting-the-Help-You-Need-Updated-August-2019.pdf>.
- 7 In addition to the Medicaid exceptions for children, pregnant women, and emergency Medicaid, there are exceptions for Medicaid services delivered in schools when the child is enrolled in Medicaid or when the services are provided to the child through an individualized education plan under the Individuals with Disabilities Education Act.
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- 9 Medicaid and CHIP Payment and Access Commission, CHIP Eligibility, available at <https://www.macpac.gov/subtopic/eligibility-2/>.
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- 11 Kaiser Family Foundation, Changes to Public Charge Inadmissibility Rule: Implications for Health and Health Coverage, (August 2019), available at <https://www.kff.org/disparities-policy/fact-sheet/public-charge-policies-for-immigrants-implications-for-health-coverage/>.
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