

Public Charge Update

December 7, 2018



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Disclaimer



This presentation is not legal advice. It provides general information, and reflects our best understanding of proposed policy changes to date.

People with legal questions or seeking guidance regarding their immigration status should seek legal counsel from a trusted source.

Agenda

- What does public charge policy **look like today**?
- How has public charge **already changed**?
- What's in the **proposed regulation change**?
- How should we **talk about** public charge?
- **What's next** with the proposed regulation?
- What **member information** is protected?

What's Going On?!

- The Federal Government *proposes* changes to public charge, **but the rules governing public charge in the U.S. have not yet changed.**
- There has been a lot of media coverage, some accurate, some not.
- There is currently a great deal of **fear, confusion and misunderstanding** in immigrant communities which is leading to **fear of enrolling in or using public benefits programs like Medi-Cal & CalFresh.**
- There may be **no benefit to disenroll** from Medi-Cal & CalFresh at this time.

Public Charge Today

Definition

A person who is considered “likely to become primarily dependent on the government for subsistence.”



Benefits Considered

Only two types of benefits:

1) **Cash assistance** for income maintenance

CalWORKs, Supplemental Security Income (SSI), General Relief (GR), CAPI

2) **Institutionalization** for long-term care at government expense

Long-term care Medi-Cal

Public Charge Today

Totality of Circumstances

- ✓ Age
- ✓ Health
- ✓ Family status
- ✓ Financial status
- ✓ Education & skills
- ✓ Affidavit of support

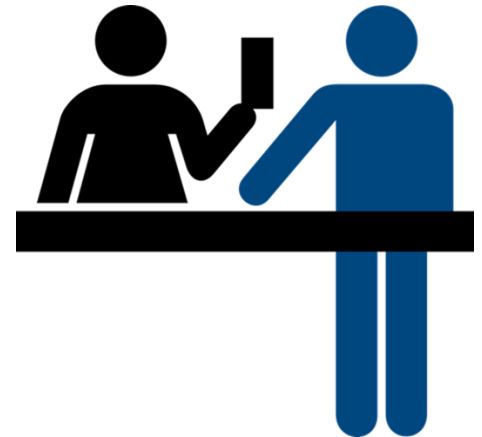
Forward-Looking

- Is the person likely to rely on cash or long-term care in the future?
- No one factor (including past use of cash benefits) is dispositive.
- Positive factors can be weighed against negative factors.

When Does Public Charge Matter?

A public charge assessment is made when a person:

- Applies to enter the U.S.
- Applies to adjust status to become a Lawful Permanent Resident (LPR, or green card)
- With a green card leaves the U.S. for more than 180 consecutive days and seeks to reenter



When Does Public Charge NOT Matter?

Public charge does not apply to:

- People who are already Lawful Permanent Residents (LPRs) with a green card
- People who are U.S. Citizens
- People who are undocumented with no path to lawful status

Who Is Exempt From Public Charge?

Public charge **does not** apply to:

- Lawful Permanent Residents (LPRs) applying for citizenship
- Refugees & asylum applicants, and when adjusting to LPR status
- VAWA self-petitioners, and when adjusting to LPR status
- Survivors of domestic violence, trafficking, or other serious crimes (applicants/recipients of U or T visas)
- Special Immigrant Juveniles (SIJS)
- Temporary Protected Status applicants (TPS)
- Several other non-citizen categories



EXEMPT

Question: Deportation?

Could I be **deported** for being a public charge?

- The public charge **deportability** ground applies in an even more narrow set of circumstances than the public charge **inadmissibility** ground, and to date it has been only rarely enforced.
- If you are facing removal proceedings, seek a **trusted immigration attorney**.



Public Charge Under This Administration

- **Early 2017:** Executive Order leaked, but never signed
- **January 2018:** Dept. of State modified Foreign Affairs Manual
- **February 2018:** Vox published the first leaked draft notice of proposed rulemaking (NPRM)
- **Late March 2018:** *Washington Post* published a more detailed leaked draft
- **March 30, 2018:** Homeland Security (DHS) submitted the draft regulations to the Office of Management and Budget for review
- **Sept. 22, 2018:** DHS issued a press release and text of the public charge rule on DHS website
- **October 10, 2018:** NPRM, *Inadmissibility on Public Charge Grounds*, was published in the Federal Register

Public Charge Changes in the Foreign Affairs Manual

Foreign Affairs Manual (FAM)

Officials in U.S. consulates abroad use the Department of State's FAM to make decisions about whether to grant permission to enter the U.S.



Foreign Affairs Manual Changes

January 2018: revisions to FAM instructions

- Same definition of public charge
- Affidavit of support no longer sufficient
- Look to applicant's age, health, family status, financial resources, skills. "Totality of circumstances" test now considers:
 - Use of non-cash benefits
 - Benefits used by sponsors or family members

Only impacts decisions made by consular officials abroad.

Foreign Affairs Manual Changes

Impact so far:

- Some denials or requests for additional information
- More scrutiny of affidavits of support
- More questions about income, family members with disabilities
- Forms remain the same
- Consular officers maintain discretion, practices vary

Proposed Public Charge Changes

- 1) **New definition** of “public charge”
- 2) **Totality of circumstances test** has new detailed negative factors that make it harder for low and moderate income people to pass
- 3) Additional **public benefits** are included



Public Charge Definition

Currently

A person who is considered “likely to become primarily dependent on the government for subsistence.”

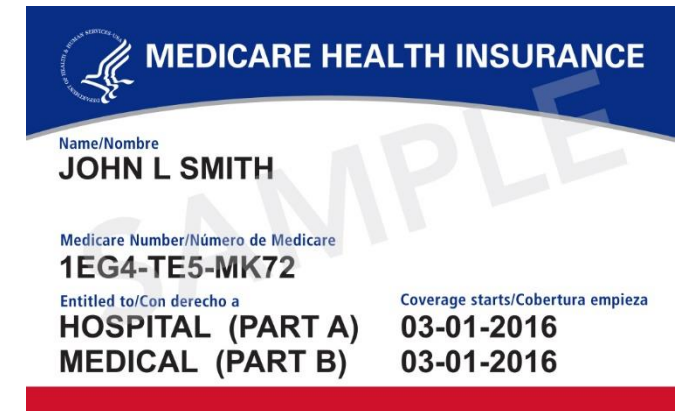
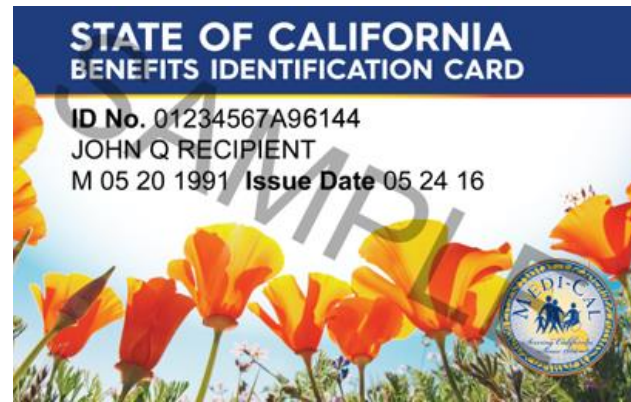
Proposed

A person “who receives one or more public benefits.”



New Public Benefits Considered

- Most Medi-Cal programs
- CalFresh (SNAP, food stamps)
- Medicare Part D Low Income Subsidy (Extra Help)
- Housing assistance (public housing, Section 8)



Public Benefits NOT Considered

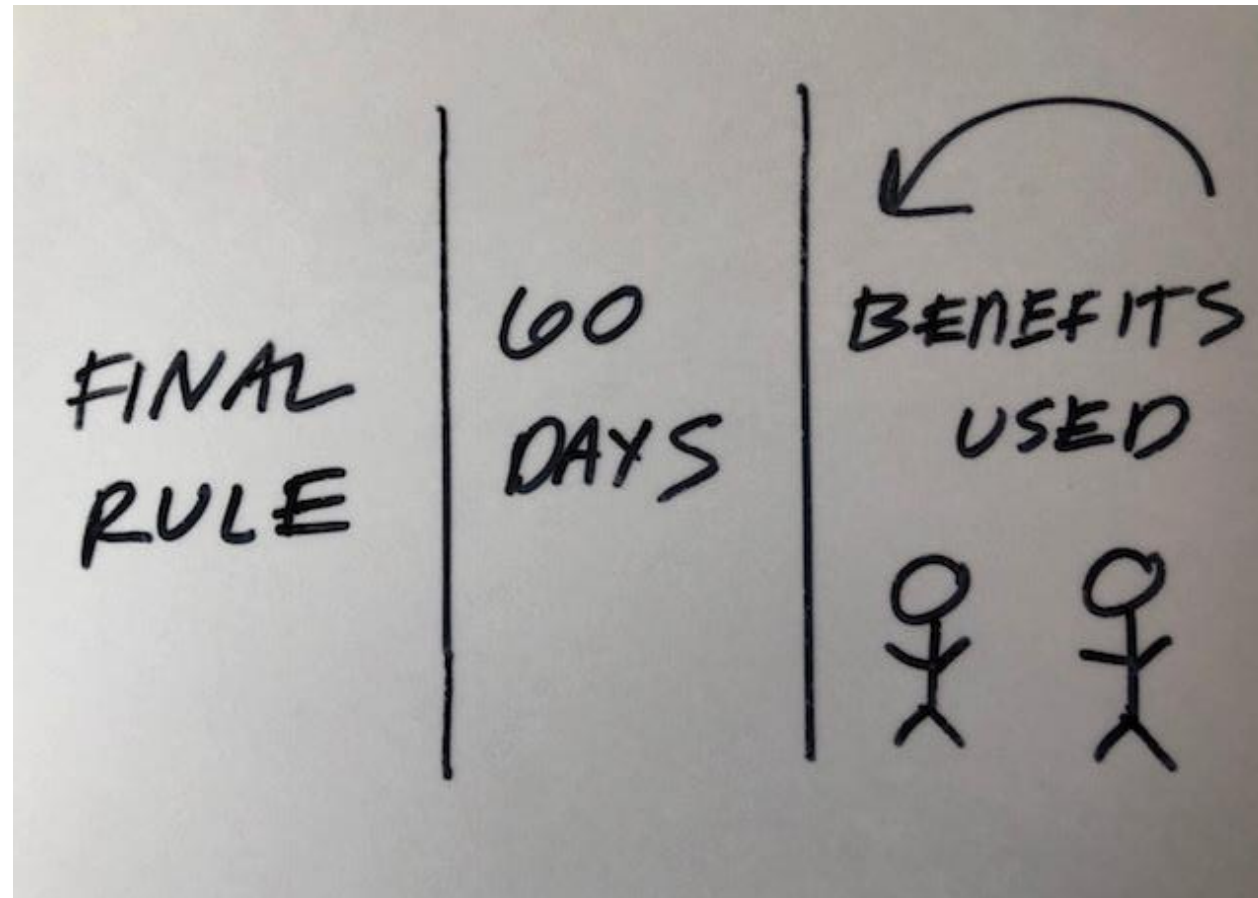
- Benefits received by immigrant family members
- Disaster relief
- Medi-Cal for an emergency medical condition
- Entirely state local or tribal programs (other than cash assistance)
- School breakfast & lunch
- WIC
- Federal Earned Income Tax Credit (EITC)
- Student loans
- Advance Premium Tax Credits (APTCs)
- My Health L.A.
- Health center sliding fee programs
- Head Start

Family Status Factors

- Receipt of benefits by dependents (including U.S. citizen children) will not directly be a factor in applicant's public charge test.
- If a child or family member is an immigrant, their own use of benefits will count toward their own public charge determination.



Proposed Changes NOT Retroactive



Question: Cancel Benefits?

What do I tell my patients if they ask whether they should **dis-enroll from Medi-Cal or CalFresh**?

- Medi-Cal and CalFresh are **not** part of the public charge test today in the U.S.
- There may be no benefit to cancelling those benefits today.
- Once the proposed rule is finalized, you will have at least 60 days to make a decision about whether to keep your Medi-Cal or CalFresh.
- For further information, contact a **trusted legal advisor**.

Public Charge Impact

- Noncitizens and their family members are **highly likely to be aware of the proposed policy change**.
- If rule is adopted, non-citizens, and the families of non-citizens, could potentially be **dissuaded from using benefits for which they are eligible** due to fear of immigration consequences.
- The “chilled” population is the universe of people who may drop or not apply for benefits either because they are certain they will be affected or **believe, whether correctly or not, that they or their family members might be affected by the new rule**.

Chilled Population

National:

- Non-Citizens – 22.2 million
- Non-Citizens & Family Members – 41.1 million
- Below 125% FPL – 7.5 million non-citizens, 14 million non-citizens & family members

Los Angeles County:

- Non-Citizens – 1.7 million
- Non-Citizens & Family Members – 3.4 million
- Below 125% FPL – 677,000 non-citizens, 1.3 million non-citizens & family members

Talking Public Charge

1. Public charge rules in the U.S. have **not yet changed**.
2. The proposed rule would not consider any new benefits until **after it is finalized**.
3. Public charge today and as proposed does **not apply** to all immigrants.
4. The privacy of your personal information is **protected by law**.
5. More questions? **Talk to a trusted legal advisor**.

Question: Identifying Patients

How do I identify if my patients are concerned about public charge?

- Explore reasons for **cancelling appointments**.
- Ask why they are **thinking of cancelling benefits**.
- **Answer questions** as best as you can.
- Refer patients to **trusted legal advisors**.

The Future of Public Charge

Federal Government is accepting comments on the proposed rule at:

www.regulations.gov

“Inadmissibility on Public Charge Grounds”

Deadline: December 10, 2018

The Future of Public Charge

1. Department of Homeland Security reviews all comments
2. Final regulation is published in the Federal Register (maybe)
3. At least sixty (60) days before final regulation takes effect

Public Charge Highlights

- The existing public charge rule remains in effect until a new rule is finalized.
- The final rule could look different from what's proposed today.
- The proposed rule may never be finalized.

Protecting Member Information

Under the Affordable Care Act:

- Information provided to establish Medi-Cal and Covered California eligibility may not be used for purposes other than marketplace operation, program administration and making eligibility determinations.
- Information obtained for purposes of determining eligibility is not used by ICE as the basis for pursuing immigration enforcement actions.

Protecting Members

Immigration and Customs Enforcement (ICE):

- Immigration enforcement actions such as arrests, interviews, searches, and surveillance will generally not occur at **sensitive locations**, which includes **health care facilities like clinics and health centers**.
- Does your office have a plan if ICE shows up?

Question: Children's Benefits?

What do I say if an **undocumented parent** wants to dis-enroll their **U.S. citizen children** from Medi-Cal and CalFresh?

- Medi-Cal and CalFresh are **not** part of the public charge test today in the U.S.
- The **children's** use of benefits will **not** be a factor in the **parent's** public charge test.
- If you have no route to lawful immigration status, public charge is unlikely to apply to you.
- For more information, contact a **trusted legal advisor**.

Your Questions



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