

What You Need to Know About Public Charge: A Resource for California Hospitals

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What is “public charge?”

Part of federal immigration law for over 100 years, the “public charge” test is designed to identify immigrants who may depend on the government benefits. If the government determines that a person is likely to become a “public charge,” it can deny that person admission to the U.S. or lawful permanent residence (or “green card” status). Certain categories of immigrants are exempt from the public charge rule.

On August 14, 2019, the Department of Homeland Security (DHS) finalized a rule to allow the federal government — after considering the immigrant’s age; health; family status; education and skills; and financial resources — to exclude anyone who has used, or is likely to use, certain health care, nutrition, or housing programs for more than 12 months in a 36-month period. The rule adds specific standards for income, health, age, and English proficiency, and expands the forms of public assistance that are considered “public benefits.” (Medi-Cal for emergency medical conditions is not considered.) On Jan. 27, 2020, the U.S. Supreme Court [set aside the preliminary injunction](#) from New York that prevented the DHS public charge rule from taking effect nationwide. This was the last of the three district court nationwide injunctions standing, which means the DHS rule can go into effect nationwide — except in Illinois — while the litigation challenging it continues.

How is the public charge rule applied today?

Under the current policy, the only benefits considered in determining who is likely to become a public charge are:

- Cash assistance, such as Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), and comparable state or local programs
- Government-funded long-term institutional care

How will public charge change under the final rule?

The final rule marks a significant departure from the current policy. For over 100 years, the government has recognized that work supports like health care and nutrition programs help families thrive and remain productive. Decades ago, the government clarified that immigrant families can participate in essential health and nutrition programs without fear that doing so would harm their immigration case.

The new rule targets key programs that help participants meet basic needs, such as:

- Non-emergency Medicaid, including long-term care. There are limited exceptions for youth under the age of 21, pregnant women (including women for 60 days after the last day of pregnancy), certain disability services funded by Medicaid under the Individuals with Disabilities Act, or in a school setting
- Supplemental Nutrition Assistance Program (SNAP)
- Section 8 housing assistance under the Housing Choice Voucher Program, Section 8 project-based rental assistance, and certain other forms of subsidized housing

Some immigrant groups are not subject to public charge.

Some immigrants — such as refugees, asylees, survivors of domestic violence, and other protected groups — are not subject to public charge determinations and would not be affected by this rule if they are seeking status through those pathways. The rule also excludes benefits received by active duty servicemembers, their spouses, and their children.

Public charge is also not a consideration when lawful permanent residents (green card holders) apply to become U.S. citizens.

Receipt of benefits by the individual – not family members – is considered.

Moreover, only the benefits listed in the rule may be considered. Pell Grants, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), child care, marketplace subsidies, low-income subsidies for prescription drug costs under Medicare Part D, and other benefits not listed would not be considered. Use of Medicaid or SNAP by eligible family members who are not applying for status themselves also would not be considered under this rule. However, entire households may be fearful to seek needed health care in hospitals, or may delay care until their condition worsens.

Role of hospitals

Caring for the sick and healing the injured — without regard to a patient’s ethnicity or citizenship status — is the mission of all hospitals.

However, hospitals should not provide legal advice to patients on the impact of the public charge rule on their immigration status, as each situation is different. Instead, hospitals should refer patients to an immigration expert who can advise on the patient’s particular situation.

Additionally, the California Health and Human Services Agency has created an [overview of the rule](#) (currently undergoing updates).

[This online directory](#) includes local nonprofit organizations that provide legal help and advice. The California Department of Social Services also maintains a list of immigration service providers in California at <http://www.cdss.ca.gov/Benefits-Services/More-Services/Immigration-Services/Immigration-Services-Contractors>.

You can still explain whether someone is eligible for a health care or public benefits program, but only a qualified immigration lawyer should advise patients on whether their use of the program will affect their immigration status.

Hospitals have the opportunity to reassure the public that they are always ready to provide care regardless of a patient’s citizenship status, and that they do not report undocumented individuals to authorities. Accordingly, CHA has developed a [Reassuring Our Communities Toolkit](#) that includes a fact sheet on patient privacy rights in responding to inquiries from the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), or other law enforcement officials.

For more information on public charge, visit

www.calhospital.org/cha-news-article/final-rule-expands-list-programs-be-considered-under-public-charge-test.