



Public Charge Final Rule

AUDREY MORSE GASTEIER
Chief of Policy and Strategy

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Public Charge Overview

Today we'll cover:

- Background on public charge
- Key features of the final rule issued in August
- Populations affected by the final public charge rule
- Health coverage and public charge
- Health Connector implications
- Timeline and pending legal challenges
- Preparing for the impact of public charge

Background on Public Charge

The Department of Homeland Security (DHS) issued its “Inadmissibility on Public Charge Grounds” final rule on August 14 overhauling federal guidance that had been in place since 1999.

- DHS released its proposed Public Charge rule on October 10, 2018 and the Health Connector submitted comment detailing concerns for Health Connector members on December 10th, 2018 during the 60 day comment period
 - Over 266,000 public comments were submitted, including by the Health Connector
- “Public charge” refers to certain immigrants who are considered by DHS to be “primarily dependent” on the government for support
- DHS conducts public charge determinations when certain non-citizens apply for admission to the U.S. or for a green card (lawful permanent residency)
- Public charge determinations are based on an individual’s “totality of circumstances”. Factors considered include an individual’s age, health, education, financial status/assets/resources, family status, education, skills, and affidavit of support filed by an immigrant’s sponsor
- Since 1999, the public benefits that can be considered in public charge determinations have included cash benefits and/or institutionalization for long-term care
- If an immigrant is found to be a public charge, they may be denied entry or barred from receiving a green card

Key Features of the Final Public Charge Rule

Compared to existing federal guidance, the final public charge rule significantly broadens who may be considered inadmissible on public charge grounds (but is narrower than the proposed rule).

- Under the final rule, an immigrant who is found to be “more likely than not” to become a “public charge” in the future may be denied admission to the US or denied lawful permanent resident status
 - The final rule defines “public charge” as a person who receives one or more specific public benefits for more than 12 months within any 36 month period
- The final rule added Medicaid, the Supplemental Nutrition Assistance Program (SNAP), and housing assistance to the list of public benefits that can be considered in public charge determinations
 - The final rule excludes certain Medicaid benefits from public charge determinations; Medicaid exceptions include: benefits for children and pregnant women (including 60 days postpartum), Medicaid benefits for emergency medical conditions, benefits under the Individuals with Disabilities Act, and school-based Medicaid services
 - Premium tax credits under the ACA, the Children’s Health Insurance Program (CHIP), and Medicare Part D subsidies are **not considered** public benefits for the purposes of determining public charge
 - The final rule clarifies that application or certification for benefits does not constitute receipt, although may serve as evidence of an immigrant’s likelihood of receiving public benefits in the future
- In order to determine if someone will become a public charge in the future, the new rule added immigration status as a new factor to consider in the totality of circumstances test and prescribed new considerations for each factor
 - For example, under the new rule, if a diagnosed health condition interferes with ability to work and someone is uninsured, it will be considered a heavily-weighted negative factor in public charge determinations
 - The final rule also included a “heavily weighted positive factor” for having private health insurance without premium tax credits (PTC) or advance premium tax credits (APTC) under the ACA

Final Rule Provisions Regarding Population Affected by Public Charge

Immigration status determines how public charge impacts an individual.

- Public charge primarily impacts lawfully-present immigrants who have not yet become a legal permanent resident or citizen, such as with those with family, student, or employer visas, and those seeking to immigrate to the U.S.
- Certain immigration statuses are listed in the rule as exempt from public charge such as refugees and asylees

Final Rule Identification of Affected Population	Final Rule Itemized Exemptions
<ul style="list-style-type: none"> Applicants for admission (for example, at a port of entry) Those seeking a visa (for example, student, worker, or family visa) Those seeking adjustment of status (for example, application for a green card) Those seeking extension of stay (for example, extension of work visa) 	<ul style="list-style-type: none"> U.S. Citizens Green card holders (who do not plan to leave the country for more than 6 months) Refugees Asylees Survivors of trafficking, domestic violence or other serious crimes Certain people paroled into the U.S. Special immigrant juveniles VAWA self-petitioners Active duty service-members

Sources: Section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4); [84 FR 41292](#), p. 41329; [84 FR 41292](#), p. 41313; [84 FR 41292](#), p.41326; [84 FR 41292](#), p. 41345; [84 FR 41292](#), p. 41340; [84 FR 41292](#) p. 41345; [84 FR 41292](#), p.41419; [84 FR 41292](#), p. 41507

Health Coverage and Public Charge

A complex array of interactions between health coverage, health status, income, and public charge determinations makes public communication and support challenging and impacts difficult to estimate.

- While premium tax credits received through the Health Connector are not considered a public benefit subject to public charge ([84 FR 41292](#), p.41476), due to the streamlined application with MassHealth, any time an individual applies for help paying for health insurance through the Health Connector, eligibility for MassHealth is also being considered at the same time. The act of having applied for (and even been denied for) Medicaid may be considered as part of the “totality of circumstances” in determining whether someone is a public charge ([84 FR 41292](#), p.41297)
- Since receiving private health coverage (without APTC) is a heavily-weighted positive factor in the public charge test, Health Connector members who are subject to public charge and eligible for APTC may opt for unsubsidized coverage
- It’s important to note that children can keep their health benefits through MassHealth or the Health Connector without it being used against a parent or child in the public charge test, as noted in the final rule ([84 FR 41292](#), p. 41501 and 41292)
- In addition, applying for programs solely on behalf of one’s child or another household member will not reflect negatively on an immigrant subject to public, according to the final rule ([84 FR 41292](#), p. 41292)
- “Chilling effects” are difficult to accurately estimate

Health Connector Implications

The Health Connector's mission and responsibility remains to extend affordable coverage to all eligible individuals.

Member confusion and public-facing Open Enrollment outreach

- Health Connector non-citizen members may need support to help them make informed choices regarding their health coverage
- More broadly, outreach to immigrant communities may need to address the confusion and “chilling effects” these communities are experiencing to reduce unnecessary disenrollment and provide accurate, helpful information and resources

Individual mandate policy implications

- Since certain immigrants in Massachusetts may choose to go without health coverage in order to avoid inadmissibility on public charge grounds, more residents may be subject to an individual mandate penalty
- The Health Connector is actively considering ways to address this conflict and is working to formulate a mitigation strategy (e.g., individual mandate penalty hardship waivers)

Timeline & Pending Legal Challenges

The final public charge rule goes into effect on **October 15th, 2019**.

- The rule states that public benefits received before October 15th will not be considered by immigration officials for the purposes of making a public charge determination. ([84 FR 41292](#), p. 41504)



Legal challenges against the final rule could change the rule’s effective date:

Plaintiffs	Claims	Relief Sought	Hearing Scheduled
Washington, Virginia, Colorado, Delaware, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Rhode Island, and Hawaii filed a lawsuit in the U.S. District Court for the Eastern District of Washington	APA (contrary to various cited statutes), APA (ultra vires by extending public charge to stay or change of status), APA (arbitrary and capricious – 20+ specific aspects), equal protection (5 th amendment) discrimination motivated on the basis of race, ethnicity, or national origin	Vacate rule, enjoin rule	10/3/2019
Santa Clara County and San Francisco filed a lawsuit in the U.S. District Court for the Northern District of California	APA (contrary to various statutes), APA (arbitrary and capricious and abuse of discretion for various bases)	Declaratory and injunctive relief	10/2/2019
New York (state and city), Connecticut, and Vermont filed a lawsuit in the U.S. District Court for the Southern District of New York	APA (exceeds statutory authority), APA (not in accordance with law), APA (arbitrary and capricious), APA (without observance of procedure required by law), equal protection (5 th amendment), motivated by animus toward Latinx populations and communities of color	Declaratory and injunctive relief	N/A
California, Maine, Pennsylvania, Oregon, and D.C. filed a lawsuit in the U.S. District Court for the Northern District of California	Contrary to law, arbitrary and capricious, equal protection (5 th amendment)	Declaratory and injunctive relief	10/2/2019
National Immigration Law Center and a coalition of health care providers and nonprofit organizations that serve immigrant communities also filed a lawsuit in the U.S. District Court for the Northern District of California	APA (contrary to statute), APA (arbitrary and capricious), equal protection (5 th amendment) based on animus against non-white immigrants, issued by an unlawfully appointed agency director	Declaratory and injunctive relief	10/2/2019

Preparing for the Impact of Public Charge

Collaboration with a range of stakeholders is necessary to best support Health Connector members and to help prevent any unnecessary dropping of coverage

- Health Connector is collaborating with Health Care for All to provide consumer support and information to help ensure that Massachusetts residents have clear information to make choices
 - CCA has awarded a Marketplace Awareness grant to HCFA for conducting consumer education and support to individuals in Massachusetts, including on the topic of public charge
 - HCFA has developed a consumer-facing resource with consumer-oriented information for concerned residents on public charge and which provides information on how to contact an immigration attorney for more information
- Direction of members to trusted community groups and immigration lawyers and other trusted resources intends to:
 - Reduce unnecessary coverage or subsidy dropping
 - Help immigrant communities receive important information about changes to public charge and how it does or does not impact them
 - Inform individuals about their options based on their unique situation

Staff will continue to monitor impacts of public charge on both membership and on the Health Connector's role in promoting near-universal coverage in the Commonwealth

- CCA monitoring questions and request for disenrollment via its call center and Navigators and will study enrollment trends among lawfully present immigrants to understand any changes occurring
- CCA to continue to work with consumer and immigrant advocates to clarify understanding of the rule by those advising immigrants with concerns
- CCA to continue to direct residents with concerns to community-based resources and immigration lawyers