



**PROPOSED CHANGES TO FEDERAL “PUBLIC CHARGE” IMMIGRATION REGULATIONS**  
**What we know and what we can do**  
**October 2018**

I. What is going on?

- a. The Trump Administration is seeking to change long standing immigration policy that could lead to denial of legal permanent residence by finding that many immigrants are likely to become a “public charge” if they use health, nutrition and housing programs
- b. The new rules would replace family immigration policies in favor of policies that favor richer and better educated immigrants
- c. Families are reported to be avoiding health care, vaccines, education and social services for themselves and their children to preserve their rights to become legal permanent residents and citizens
- d. Remember, half of California children have at least one immigrant parent

2. What is “public charge?”

- a. “Public charge” is a ground of inadmissibility that could bar a person’s admission to the US on a visa or adjustment of status to that of a lawful permanent residence (LPR, “green card”)
- b. After looking at the “totality of circumstances,” a person can be determined to likely become a public charge and be denied entry or an adjustment of status

3. What are the current rules?

- a. Only 2 types of social and health benefits affect a public charge determination
  - i. Cash aid – TANF, SSI, General Assistance
  - ii. Government funded long term care

4. What is being proposed?

Proposed new federal regulations will:

- a. Expand the programs that can lead to a public charge determination to include:
  - i. Health (Medicaid/Medi-Cal – except emergency and state only services)
  - ii. Nutrition (SNAP/CalFresh)
  - iii. Housing (Section 8 vouchers)
  - iv. Pharmacy (Medicare Part D subsidies)

Benefits <u>Included</u> for Public Charge	Benefits <u>Excluded</u> from Public Charge
<p><i>Benefits included:</i></p> <ul style="list-style-type: none"> <li>● Cash Support for Income Maintenance*</li> <li>● Long Term Institutional Care at Government Expense*</li> <li>● Non-Emergency Medicaid**</li> <li>● Supplemental Nutrition Assistance Program (SNAP or Food Stamps)</li> <li>● Medicare Part D Low Income Subsidy</li> <li>● Housing Assistance (Public Housing or Section 8 Housing Vouchers and Rental Assistance)</li> </ul> <p><i>* Included under current policy as well</i>  <i>** Exception for certain disability services offered in school. DHS is asking for input on inclusion of CHIP, but the program is not included in the regulatory text</i></p> <p>Source: Protecting Immigrant Families, Proposed Changes to Public Charge: Analysis and Frequently Asked Questions, 10/10/18</p>	<p><i>ANY benefits not on the included list will not be applied toward the public charge test, such as:</i></p> <ul style="list-style-type: none"> <li>● Disaster relief</li> <li>● Emergency medical assistance</li> <li>● Entirely state local or tribal programs (other than cash assistance)</li> <li>● Benefits received by immigrant’s family members</li> <li>● CHIP**</li> <li>● Women Infants and Children (WIC)</li> <li>● School Breakfast and Lunch</li> <li>● Energy Assistance (LIHEAP)</li> <li>● Transportation vouchers or non-cash transportation services</li> <li>● Non-cash TANF benefits</li> <li>● Federal Earned Income Tax Credit and Child Tax Credit</li> <li>● Student Loans</li> </ul>

- b. Establish a “totality of circumstances” balancing test that favors richer, better educated and healthier persons over those with family ties

Negative factors leaning to Public Charge determination	Positive factors leaning against Public Charge determination
<ul style="list-style-type: none"> <li>● Income under 125% federal poverty level (\$31,375 family of 4)</li> <li>● Children</li> <li>● Seniors</li> <li>● Limited English proficiency</li> <li>● Limited education</li> <li>● Large family</li> <li>● Poor credit history</li> <li>● Receipt of listed benefits during 36 months prior to applying for admission or “green card” (heavy negative) – <u>prospective</u> for newly listed programs</li> <li>● Health conditions that require extensive treatment or affect ability to work, go to school (heavy negative)</li> </ul>	<ul style="list-style-type: none"> <li>● Income over 250% federal poverty level (\$63,000 family of 4) (heavy positive)</li> <li>● Having private health insurance</li> <li>● Affidavit of support from sponsor or “public charge” bond</li> </ul>

5. Who does this affect?

- a. This rule directly affects immigrants who are applying to become a lawful permanent resident (LPR or green card holder) or to extend or change the category of a nonimmigrant visa
- b. Slightly different rules affect visa applicants going through process abroad at Consulates
- c. Does not directly affect:
  - i. Current “green card” holders or applicants for citizenship
  - ii. Refugees and asylum applicants – various programs
  - iii. Applicants for temporary protected status, victims of crime and domestic violence
  - iv. DACA renewals
  - v. Family members of applicants

6. What are families hearing and doing?

- a. Public charge has always been a misunderstood, hot-button issue
- b. Prior leaked proposals included many more programs and all family members (including citizens)
- c. Conflicting and confusing messages
- d. Reported drop in accessing health care, vaccines, WIC, food programs, educational services and other social services for all family members

7. What do we tell families?
  - a. This is only a proposal at this point. There is still time to fight back.
  - b. The public charge test looks at all the person's circumstances, weighing positive factors against any negative ones.
  - c. If the regulations go into effect as proposed, they will:
    - i. only affect use of listed public services after the implementation date
    - ii. not take into account the use of public services by family members
    - iii. only affect applications for adjustment of status and legal permanent residence and entry visas. Not LPR renewals or citizenship
    - iv. not affect refugees; asylees; survivors of trafficking, domestic violence, or other serious crimes (T or U visa applicants/holders); VAWA self-petitioners; special immigrant juveniles; and certain parolees into U.S.
  - d. Eligible family members who are LPRs and citizens should continue to use health, social and educational services
  - e. Using benefits now can help you or your family members become healthier, stronger, and more employable in the future.
  - f. Families need to make decisions based on their unique circumstances and needs.
  - g. Get help deciding what's best for your family and, if you can, consult with an immigration attorney or BIA-accredited representative about your own situation
  
8. What is the process moving forward?
  - a. Proposed regulations were published in the Federal Register on October 10, 2018
  - b. 60 day public comment period expires December 10, 2018
  - c. Publication of final rule must address submitted comments
  - d. Implementation 60 days after publication of final rules
  - e. Determinations are prospective
  
9. What can you do now?
  - a. Submit comments directly to USCIS or through Protecting Immigrant Families  
[https://www.regulations.gov/comment?D=DHS\\_FRDOC\\_0001-1706](https://www.regulations.gov/comment?D=DHS_FRDOC_0001-1706)  
<https://protectingimmigrantfamilies.org>
  - b. Encourage others to submit comments
  - c. Issue a public statement on the proposed rule and impacts on children and families
  - d. Sponsor public presentations for families, family workers and policy makers.
  - e. For individual cases, consult immigration attorney or specialist  
<http://www.cdss.ca.gov/Immigration-Services>  
<https://ready-california.org/legal-service-directory/>  
Catholic Charities <https://catholiccharitiescentralcoast.org>
  
10. Resources:  
<https://protectingimmigrantfamilies.org>  
California Immigrant Policy Center ([www.caimmigrant.org](http://www.caimmigrant.org))  
Immigrant Legal Resource Center ([www.ilrc.org](http://www.ilrc.org))  
National Immigration Law Center ([www.nilc.org](http://www.nilc.org))