

Public Charge Final Rule: Analysis and Potential Implications

September 3, 2019

1-2 PM ET

Please stand by, this webinar will begin shortly

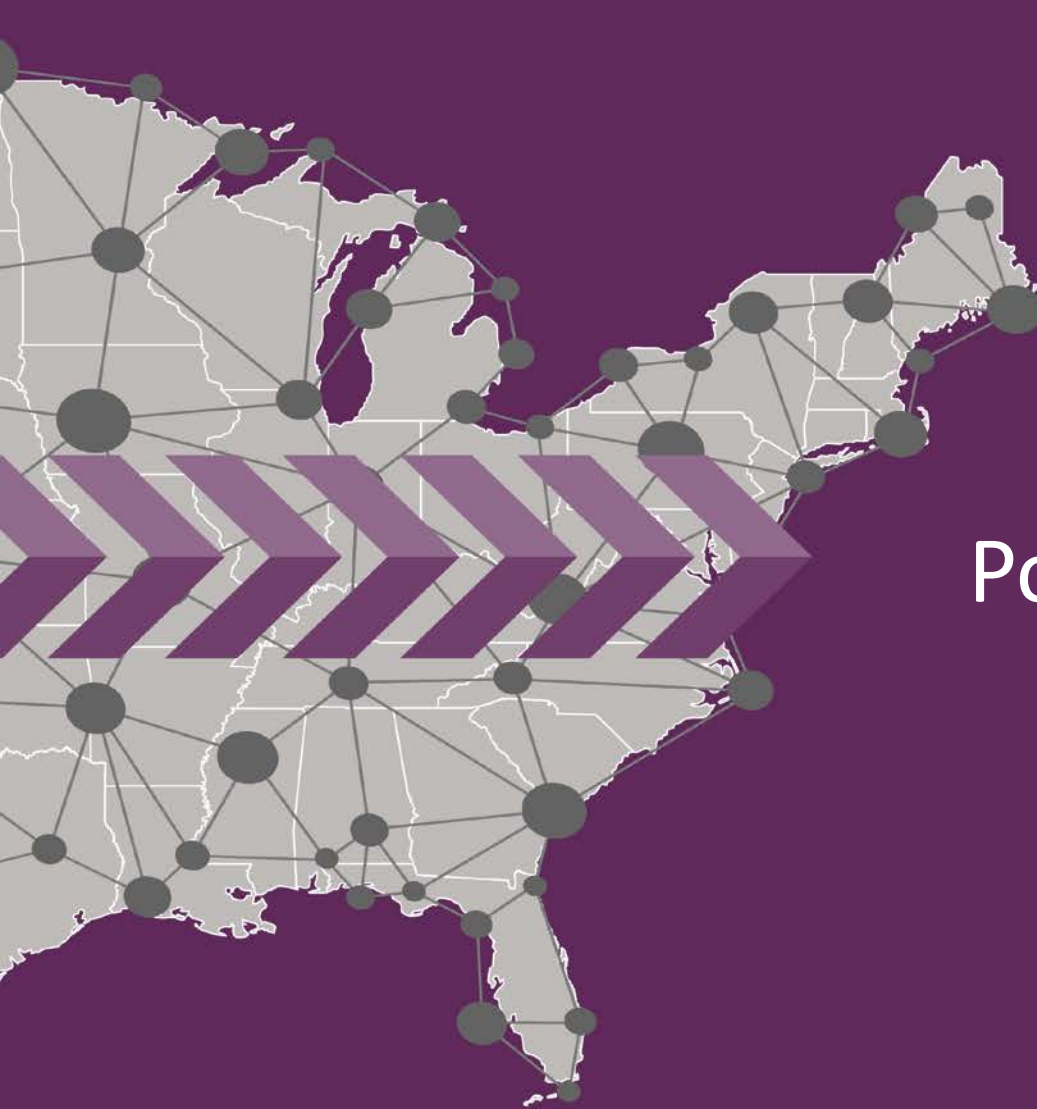
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These slides were updated on February 24, 2020. For more information, see materials available here:

<https://www.shvs.org/resource/public-charge-rule/>



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About State Health & Value Strategies

State Health and Value Strategies (SHVS) assists states in their efforts to transform health and health care by providing targeted technical assistance to state officials and agencies. The program is a grantee of the Robert Wood Johnson Foundation, led by staff at Princeton University's Woodrow Wilson School of Public and International Affairs. The program connects states with experts and peers to undertake health care transformation initiatives. By engaging state officials, the program provides lessons learned, highlights successful strategies, and brings together states with experts in the field. Learn more at www.shvs.org.

Questions? Email Heather Howard at heatherh@Princeton.edu.

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About Manatt Health

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Speakers



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Housekeeping Details

All participant lines are muted. If at any time you would like to submit a question, please use the Q&A box at the bottom right of your screen.

After the webinar, the slides and a recording will be available at **www.shvs.org**.

Agenda

- Introduction, Context and Background
- Overview of the Final Public Charge Rule
- Potential Impacts of Final Rule
- Communications Considerations
- Q&A

Introduction, Context and Background

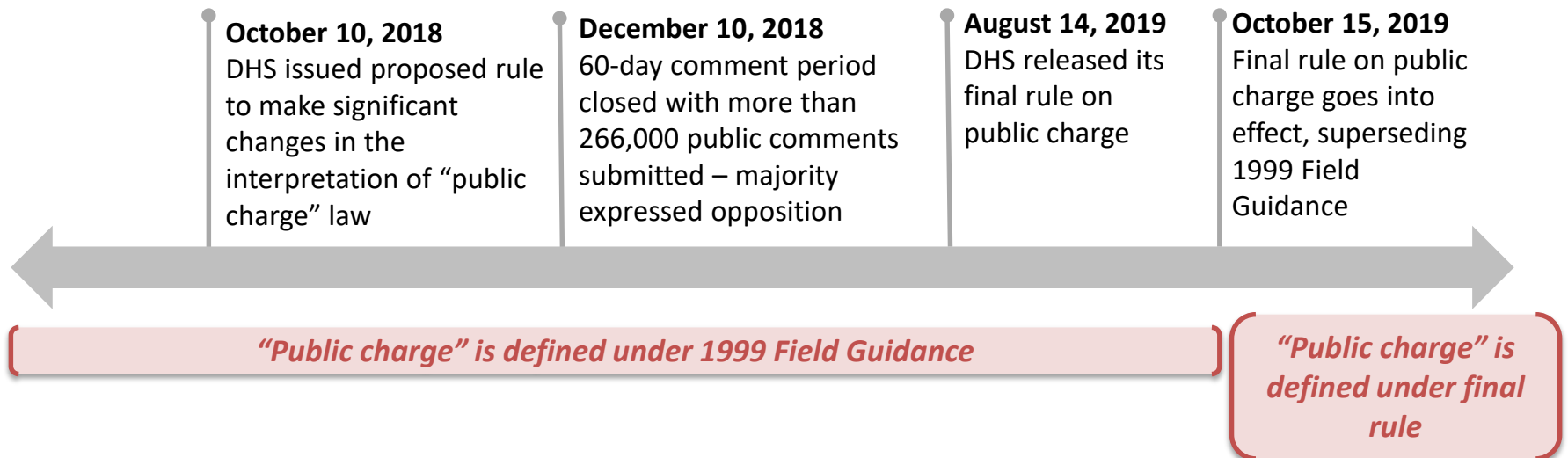
Final Rule Key Takeaways

- On August 14, the Department of Homeland Security (DHS) issued its “Inadmissibility on Public Charge Grounds” final rule, which **overhauls federal guidance** that has been in place since 1999
- The final rule **subjects new populations to public charge**, gives greater weight to factors that **penalize low-income immigrants**, and **expands the scope of benefits considered in public charge determinations** to include Medicaid, Supplemental Nutrition Assistance, and housing benefits
- While the final rule **includes additional Medicaid benefit exemptions** relative to DHS’s proposed rule – notably, exempting Medicaid benefits for children and pregnant women – it is **still likely to have a significant “chilling effect”** on the use of benefits by legal immigrants and their families
- A variety of operational and implementation questions will require more analysis, and possibly additional DHS or HHS guidance

Public Charge Rulemaking

Litigation delayed the effective date of the DHS rule until February 24, 2020. For more information, see materials available here: <https://www.shvs.org/resource/public-charge-rule/>

- DHS conducts public charge determinations when a noncitizen applies for admission to the U.S. or for lawful permanent resident status (a green card); guidance from 1999 guides this review
- Immigrants determined to be or “likely at any time to become” a public charge may be denied entry or, if they live in the U.S., barred from changing their temporary status to permanent







- Litigation to block the rule’s implementation has already been filed in multiple states.
- The Department of Justice (DOJ) is developing a proposed rule related to deportation on the basis of public charge; State Department public charge guidance is also expected to change to align with DHS rule

Sources: [Deportability and Inadmissibility on Public Charge Grounds](#) (“Field Guidance”), 64 Fed. Reg. 28689 (May 26, 1999); [Inadmissibility on Public Charge Grounds](#), 83 Fed. Reg. 51114-51296 (Oct. 10, 2018); [Inadmissibility on Public Charge Grounds](#), 84 Fed. Reg. 41292-41508 (Aug. 14, 2019)



Overview of the Final Public Charge Rule

Key Changes in the Final Rule

The final rule overhauls the existing public charge determination process by:

-  Applying public charge determinations to new groups of immigrants
-  Giving DHS more latitude to consider evidence – like income, education, health status –when weighing whether someone is a public charge
-  Expanding the list of public benefits considered
-  Making it more likely that low-income immigrants will be determined a public charge

The rule does not change eligibility for benefits, but attaches new consequences to benefit use, increasing the odds that immigrants – and their families – might stop using benefits even if they are not directly impacted.

-  These benefits include Medicaid, which is available to certain lawfully present immigrants
-  New Medicaid exemptions in the final rule mean that use of Medicaid by children and pregnant women won't be considered in a public charge determination, somewhat mitigating impact

Source: [Deportability and Inadmissibility on Public Charge Grounds](#) (“Field Guidance”), 64 Fed. Reg. 28689 (May 26, 1999)
[Inadmissibility on Public Charge Grounds](#), 84 Fed. Reg. 41292 (Aug. 14, 2019)

Immigrants Subject to the Public Charge Rule



The public charge rule applies to individuals:

- Seeking to legally enter the U.S.
- Legally in the U.S. seeking to become a Lawful Permanent Resident (obtain a green card)
- Seeking to legally extend a stay (e.g., extending a current visa) **(new)**
- Seeking to legally change visa types (e.g., from a student to employment visa) **(new)**



The public charge rule does not apply to:

- Green card holders who renew green cards or apply for citizenship, *unless* they leave the country either for more than 6 months and/or with certain criminal convictions, and then seek to re-enter.
- Refugees, asylees, certain Cuban, Haitian, Central American and various other categories of immigrants are statutorily exempt (*see Appendix*)
- Victims of trafficking, criminal activity, and domestic violence

DHS says in the rule that benefits used by an exempt individual will not be considered in any future public charge determination, if the person later seeks to adjust status via a non-exempt immigration pathway

Public Charge Definition

Current Guidance

(1999 Field Guidance)

- Likely at any time in the future to become a public charge
- Defined as “*primarily dependent*” on two sets of public benefits—based on the totality of an applicant’s circumstances



Final Rule

- *More likely than not* at any time in the future to become a public charge
- Defined as a person who “*receives one or more benefits for more than 12 months within any 36-month period*”—based on the totality of an applicant’s circumstances

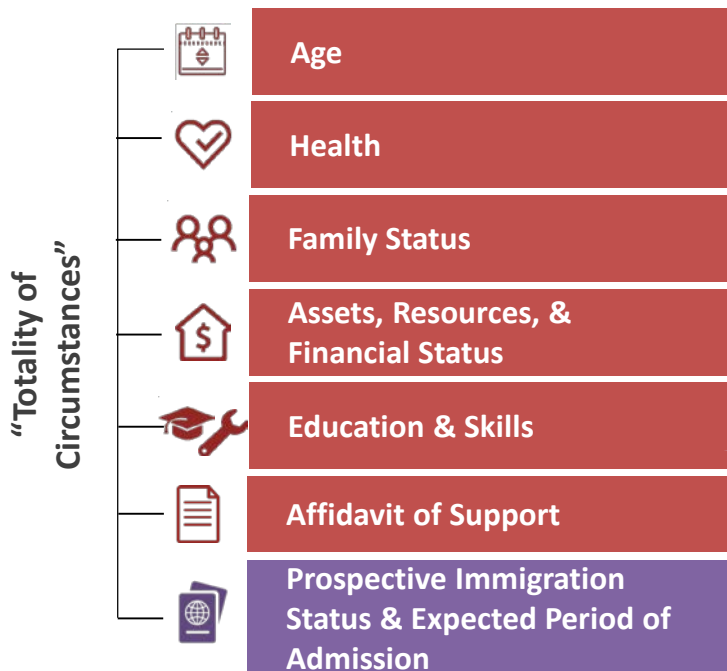
Sources: [Deportability and Inadmissibility on Public Charge Grounds](#) (“Field Guidance”), 64 Fed. Reg. 28689 (May 26, 1999)
[Inadmissibility on Public Charge Grounds](#), 84 Fed. Reg. 41292 (Aug. 14, 2019)

Totality of the Circumstances

Making a public charge determination

- Public charge determinations must consider a number of factors when evaluating whether an applicant is likely to become a public charge in the future
- The rule maintains the statutory “totality of circumstances” framework, but adds a 7th factor and newly prescribes considerations under each of the statutory factors

Factors:



Examples of New Considerations:

Health status and whether diagnosed health condition will interfere with ability to provide and care for himself, to attend school, or to work

Whether **family income is under 125% of poverty** and whether **household size** makes applicant more or less likely to become a public charge

Whether individual **has applied for or received public benefits** on or after the final rule's effective date

Education level and **English proficiency**

Sources: Statutory Framework - INA § 212(a)(4), codified at 8 U.S.C. § 1182(a)(4); *New Factors and Considerations* – [Inadmissibility on Public Charge Grounds](#), 84 Fed. Reg. 41292, at 41504 (adding new 8 C.F.R. 212.22(b)(7))

Heavily-Weighted Circumstances

While no one factor is determinative, DHS sets out circumstances that will carry more weight in a public charge determination

Heavily-weighted positive circumstances include:

- + Having financial resources, assets, and support $\geq 250\%$ of poverty (~\$63,000 for a family of four)
- + Being authorized to work and has taxable income $\geq 250\%$ of poverty
- + Having private health insurance (unless individual receives premium tax credits in the marketplace)

Heavily-weighted negative circumstances include:

- Receiving or being certified or approved to receive one or more public benefits for more than 12 months in the aggregate within any 36-month period beginning no earlier than 36 months prior to an application for admission or adjustment of status to lawful permanent resident
- Individual is not full-time student, is authorized to work, and is unable to demonstrate current employment, recent employment history, or a reasonable prospect of future employment
- Having a medical condition that is likely to require extensive medical treatment or institutionalization, or interfere with ability to provide for himself, attend school, or work *and* being uninsured and lacking ability to obtain private health insurance or pay for reasonably foreseeable medical costs
- Individual was found inadmissible or deportable by an immigration judge

Public Benefit Definition

The final rule significantly expands the scope of public benefits considered in a public charge determination

Benefit Programs	Existing (✓) and Added (+) Benefits ^{1,2}
Supplemental Security Income (SSI)	✓
Temporary Assistance for Needy Families (TANF)	✓
Federal, state, or local cash benefit programs	✓
Institutionalization for long-term care	✓
Medicaid (<i>exceptions listed on next slide</i>)	+
Supplemental Nutrition Assistance Program (SNAP)	+
Housing Assistance under the Housing Choice Voucher Program or Section 8 Project-Based Rental Assistance	+
Subsidized Housing under the Housing Act of 1937	+

Sources: ¹ Existing benefits from [Deportability and Inadmissibility on Public Charge Grounds](#) (“Field Guidance”), 64 Fed. Reg. 28689 (May 26, 1999)

² Added benefits from [Inadmissibility on Public Charge Grounds](#), 84 Fed. Reg. 41292 (Aug. 14, 2019)

Health Benefits Excluded



Certain Medicaid benefits are excluded

- Medicaid benefits for an emergency medical condition
- Medicaid benefits provided under the Individuals with Disabilities Education Act
- School-based Medicaid services
- **Medicaid benefits received by immigrants under 21 and pregnant women (including 60 days postpartum)**

Health Benefits Not Included in the Rule

- Medicare Part D Low-Income Subsidy
- Children's Health Insurance Program (CHIP)
- Affordable Care Act Marketplace subsidies (though receiving tax credits reduces positive impact of having private insurance in totality of circumstances test)
- State/locally-funded non-cash programs

Counting Public Benefits



Receipt of two benefits in one month counts as two months



Receipt of benefits for *any* amount of time will be considered in the totality of circumstances (even if less than 12 months in a 36-month period)



In addition to *receipt* of benefits, *applications* for benefits will be considered in the totality of circumstances



Only an individual's use of benefits—not use by a child or other family member—will be considered in the individual's public charge determination

Litigation delayed the effective date of the DHS rule until February 24, 2020. For more information, see materials available here: <https://www.shvs.org/resource/public-charge-rule/>

Effective Date Considerations



The final rule will take effect on October 15th

- Use of benefits newly added by the rule will only be considered if they are used *after* October 15th
 - Using 12 months of benefits in the 36 months immediately prior to application for admission/adjustment of status will be *heavily weighted*
- Use of benefits that were included in the Field Guidance (cash assistance/long term care) *still count* if they were used before October 15th
 - Cash assistance and long term institutionalization received before October 15th are *not* heavily weighted, but are a negative factor
- Final rule will apply to applications and petitions postmarked or electronically submitted after October 15th

October 15, 2019:
Rule Takes Effect

Benefit use before Oct. 15, 2019 is based on limited 1999 Field Guidance-defined benefits

Benefit use after Oct. 15, 2019 is based on Final Rule-defined benefits

Effective Date Scenarios

Scenario 1

Joe used Medicaid from January to August 2019. He uses SNAP for 6 months in 2020 and applies for a green card in January 2021.

Analysis

- Joe's use of Medicaid for 8 months *before* the effective date of the rule is not considered, meaning that only the 6 months of SNAP use after the effective date of the rule are considered in a public charge determination

Scenario 2

Mary used cash assistance for 12 months in 2018. She applies for an extension of stay in January 2020.

Analysis

- Mary's use of cash assistance is considered for 12 of the previous 36 months as a negative factor, but it is not heavily weighted (even though cash assistance was a benefit included under prior guidance)

Effective Date Scenarios

Scenario 3

Anna uses Medicaid and SNAP from January to June 2020. She applies for a green card in January 2022.

Analysis

- Using two different benefits during the same 6 months counts as 12 months of use. Anna's use of newly included benefits – after the effective date of the rule – for 12 of the previous 36 months is a *heavily weighted negative* factor.

Scenario 4

George uses cash assistance for 12 months in 2020 and applies for his green card in 2025. His income when he applies is 100% of poverty and he has limited English proficiency

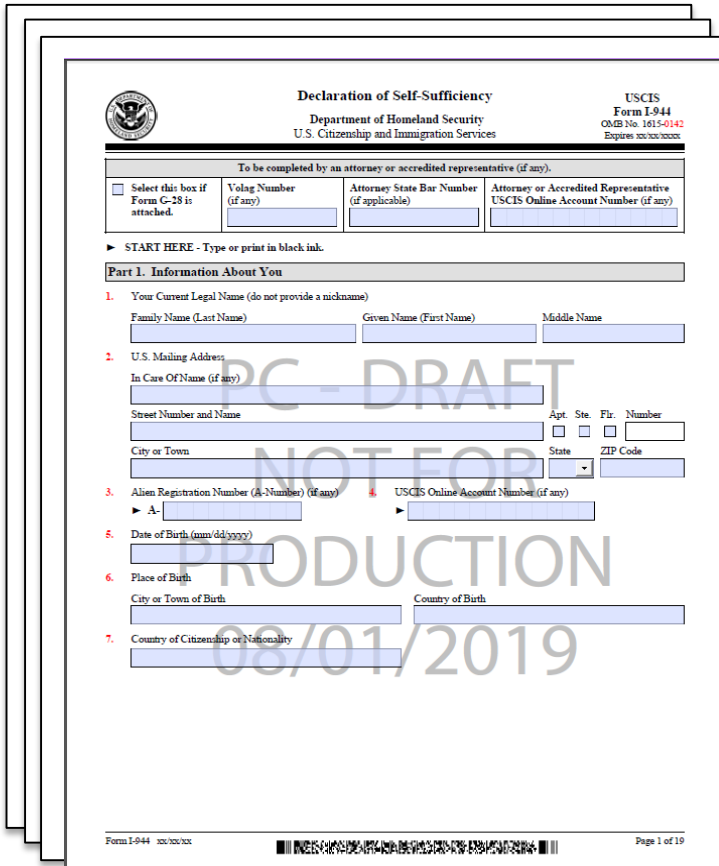
Analysis

- Use of benefits after the effective date of the rule is a *negative factor*, but not a heavily weighted negative factor since it occurred more than 3 years earlier.
- Low income and limited English proficiency are negative factors too, and DHS could decide that George is more likely than not to use benefits like Medicaid or SNAP in the future.

Implementation Considerations

Applicants will be required to submit a new form and sign under penalty of perjury

Form I-944



The image shows a stack of Form I-944, Declaration of Self-Sufficiency. The top form is clearly visible and contains the following information:

Declaration of Self-Sufficiency
USCIS Form I-944
Department of Homeland Security
U.S. Citizenship and Immigration Services

OMB No. 1615-0142
Expires 03/30/2020

To be completed by an attorney or accredited representative (if any).

Select this box if Form G-28 is attached.

Volag Number (if any) Attorney State Bar Number (if applicable) Attorney or Accredited Representative USCIS Online Account Number (if any)

▶ **START HERE** - Type or print in black ink.

Part 1. Information About You

1. Your Current Legal Name (do not provide a nickname)
Family Name (Last Name) Given Name (First Name) Middle Name

2. U.S. Mailing Address:
In Care Of Name (if any)
Street Number and Name Apt. Ste. Flr. Number
City or Town State ZIP Code

3. Alien Registration Number (A-Number) (if any) 4. USCIS Online Account Number (if any)
▶ A- [] ▶ []

5. Date of Birth (mm/dd/yyyy)
[]

6. Place of Birth
City or Town of Birth Country of Birth

7. Country of Citizenship or Nationality
[]

Form I-944 xx/xx/xx Page 1 of 19

Public Benefits

Provide the requested information and submit documentation, as outlined in the Instructions. If you need additional space to complete any Item Number in this Part, use the space provided in Part 9. Additional Information.

16. Have you **EVER** received, or are currently certified to receive in the future any of the following public benefits? (select all that apply).
- Yes, I have received, or I am currently certified to receive in the future the following benefits:
 - Any Federal, State, local or tribal cash assistance for income maintenance
 - Supplemental Security Income (SSI)
 - Temporary Assistance for Needy Families (TANF)
 - General Assistance (GA)
 - Supplemental Nutrition Assistance Program (SNAP, formerly called "Food Stamps")
 - Section 8 Housing Assistance under the Housing Choice Voucher Program
 - Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation)
 - Public Housing under the Housing Act of 1937, 42 U.S.C. 1437 et seq.
 - Federal-funded Medicaid



Implementation Considerations

Submission

- Applicants seeking permanent residence or adjusting status must complete the Form I-944 to self-report information DHS will use in making a public charge determination

Examples of Required Documentation

- Proof of insurance
- Information regarding “emergency medical condition” determination

Review

- Highly discretionary analysis by DHS field officers
- Consumer assistance and support will be critical

Potential Implications for Consumers, States and Localities, and Providers

Many Immigrants Eligible for Medicaid are *Not* Subject to the Rule, But “Chilling Effect” Likely



Consumers

- Many immigrants who are eligible for public benefits are exempt from public charge determinations (e.g., refugees and asylees)
- **Immigrants *not directly* impacted by the rule—as well as their family members (including citizens)—could disenroll from or forgo essential health, housing, and nutrition benefits** out of fear of risking their immigration status or confusion about the rule’s applicability
- **“Chilling effects” have already been documented** as a result of DHS’s *proposed* rule in October 2018. From a survey of roughly 2,000 adults in immigrant families, the Urban Institute found:
 - About 13.7% of respondents said that they or a family member did not participate in a noncash government program in 2018 for fear of risking the ability to obtain a green card
 - Chilling effects were higher (20.7%) for adults in low-income immigrant families
 - Chilling effects were reported in 14.7% of adults in families where all noncitizen members had a green card, and in 9.3% of adults in families where all foreign-born members had become citizens
- Manatt Health estimated that **13.2 million Medicaid and CHIP enrollees could be subject to chilling effects** based on an analysis of the DHS proposed rule

Sources: Hamutal Bernstein et al., Urban Institute, [One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018](#) (May 2019)
Cindy Mann, April Grady, and Allison Orris, [Medicaid Payments at Risk for Hospitals Under the Public Charge Proposed Rule](#) (Nov. 2018)

States and Localities May Experience Increased Implementation and Social Services Costs



States/Localities

- **Implementation costs**, including:
 - Costs for outreach and education to mitigate chilling effect among consumers, providers, health plans
 - Costs to educate and train program staff and enrollment assisters about the rule
 - Costs to update/develop systems to better track benefit use, provide beneficiaries with documentation of use, and, potentially in the future, share that information with DHS
- **Loss of state Medicaid revenues due to expected chilling effect**
- **Added costs for health care, social services** if families increasingly rely on state and local services

Health Care and Social Service Organizations May See New Costs



Health Care Providers

- **Loss of Medicaid revenue** as people drop or fail to apply because of the chilling effect
- **Increased uncompensated care** when eligible but uninsured people use hospital or other health services
 - Manatt Health estimated that **\$17 billion in hospital payments could be put at risk** in an analysis of potential chilling effects from the DHS proposed rule
- Immigrants and their families may forego preventive care or chronic care management, driving an **increase in costly emergency and acute care**
- **Hospitals in immigrant communities and safety net providers**—including hospitals and community health centers—may feel the greatest impact



Social Service Organizations

- Significant costs could **shift to the nonprofit sector** to fill the gaps left by federal programs

Source: Cindy Mann, April Grady, and Allison Orris, [Medicaid Payments at Risk for Hospitals Under the Public Charge Proposed Rule](#) (Nov. 2018)

Communications Considerations

Messaging Will Be Critical



Q&A

Thank You

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Appendix

Immigrant Eligibility for Medicaid, CHIP, Marketplace and Medicare Coverage

Medicaid, Children's Health Insurance Program (CHIP), Marketplace, and Medicare coverage are only available to lawfully present immigrants

Medicaid and CHIP	<ul style="list-style-type: none">• Must meet additional immigration criteria, all Medicaid/CHIP program eligibility rules, and, typically, wait 5 years to access coverage• States may—and the majority of states have—extended access to and lifted the 5 year waiting period for immigrant children and pregnant women• For undocumented immigrants, the federal government matches state costs for emergency Medicaid services
Marketplace	<ul style="list-style-type: none">• No 5 year bar for accessing Marketplace coverage; immigrants ineligible for Medicaid during 5 year waiting period may access subsidized Marketplace coverage• ACA requires that individuals are screened for Medicaid/CHIP eligibility before being determined eligible for tax credits
Medicare	<ul style="list-style-type: none">• Must meet additional immigration criteria, waiting period and other requirements to be eligible for Medicare

The proposed rule does not modify these standards

Exempt Categories of Immigrants

Individuals in the categories listed below do not need to file form I-944

- VAWA self-petitioners
- Special Immigrant Juveniles
- Certain Afghan or Iraqi nationals
- Asylees
- Refugees
- Victims of qualifying criminal activity under INA Section 245(m)
- Individuals adjusting under any category other than INA section 245(m) but who are in valid U nonimmigrant status at the time of filing application for adjustment status
- Victims of human trafficking under section 245(l) of the INA
- Individuals adjusting under any category other than INA section 245(1), but who either have pending application for T non-immigrant status that sets forth a prima facie case for ineligibility, or who are in valid T nonimmigrant status at the time of filing application for adjustment status
- Individuals adjusting under the Cuban Adjustment Act
- Individuals adjusting under the Cuban Adjustment Act for battered spouses and children
- Individuals adjusting under the Haitian Refugee Immigrant Fairness Act
- Individuals adjusting under the Haitian Refugee Immigrant Fairness Act for battered spouses and children
- Lautenberg parolees
- Individuals adjusting under the Indochinese Parole Adjustment Act of 2000
- Continuous residents in the United States since before January 1, 1972
- Individuals adjusting under the Amerasian Homecoming Act
- Polish or Hungarian Parolees
- Nicaraguans and Other Central Americans under section 203 of the Nicaraguan Adjustment and Central American Relief Act
- American Indians Born in Canada (INA section 289) or the Texas Band of Kickapoo Indians of the Kickapoo Tribe of Oklahoma, Pub. L. 97-429 (Jan. 8, 1983)
- Spouses, children, or parents of deceased soldiers under the National Defense Authorization Act (NDAA)

Sources: Added benefits from [Inadmissibility on Public Charge Grounds](#), 84 Fed. Reg. 41292, 41504-05 (Aug. 14, 2019)

Considerations in Public Charge Determination

Factor	Standards/Considerations
Age	<ul style="list-style-type: none"> Whether the individual's age impacts his or her ability to work (including whether the individual is between 18 and 61, the minimum early requirement age for Social Security)
Health	<ul style="list-style-type: none"> Whether diagnosed with condition that is likely to require extensive medical treatment or institutionalization or interfere with ability to provide and care for himself, to attend school, or to work
Family Status	<ul style="list-style-type: none"> Whether the individual's household size makes him or her more likely than not to become a public charge
Assets, Resources, & Financial Status	<ul style="list-style-type: none"> Whether the individual "has applied for, been certified to receive, or received public benefits" on or after the final rule's effective date ¹ Whether annual gross income is at least 125% of the federal poverty guideline (100% for persons on active duty in the U.S. Armed Forces) Whether the individual has significant assets (permitted under certain conditions) Whether individual has sufficient household assets and resources to cover any reasonably foreseeable medical costs Whether the individual has any financial liabilities
Education & Skills	<ul style="list-style-type: none"> Whether the individual has adequate education and skills to obtain or maintain lawful employment
Prospective Immigration Status	<ul style="list-style-type: none"> The immigration status the individual seeks and the expected period of admission
Affidavit of Support	<ul style="list-style-type: none"> For individuals required to submit an affidavit, the likelihood that a sponsor would actually provide the statutorily required financial support to the immigrant