

## Final Federal Rule on Immigrants and Public Charge

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### Overview

Under federal law, an individual seeking admission to the U.S., or seeking to become a permanent resident (obtain a green card), is “inadmissible” if the individual at the time of application for admission or adjustment of status, is found to be likely at any time to become a “public charge.” Public charge is a term used in current federal immigration law to refer to a person who federal officials determine is likely to become primarily dependent on the government for support.

Immigration officials must consider specified public health and social services in a public charge determination. Currently, the only two public programs to be considered are income cash assistance and long-term care in an institution. As the summary below details, the final rule adds certain housing and nutrition assistance programs and non-emergency Medicaid (Medi-Cal in California) to the determination of public charge.

Importantly, the rule does not include as relevant public benefits the Medi-Cal services undocumented immigrants are currently eligible to receive, including federally supported *emergency* Medi-Cal and *state-funded comprehensive* Medi-Cal coverage for undocumented children and undocumented young adults age 19-25. For more information on Medi-Cal benefits available to immigrants, read the ITUP publication, [\*Health Care Programs for California Immigrants\*](#).

This updated ITUP fact sheet reviews the final rule, existing federal law related to public charge and health care programs, and potential impacts on immigrant access to health care programs in California.

### Federal Law on Public Charge and Public Benefits

The Immigration and Nationality Act (INA) identifies groups of immigrants that are ineligible to enter the U.S. or obtain lawful permanent resident (LPR) status if they are determined to be a “public charge.”<sup>1</sup> The INA outlines the minimum factors immigration officials must consider to determine whether an immigrant is likely to become a public charge. As part of a public charge assessment, an immigration officer must consider the applicant’s:

- Age;
- Health;
- Family Status;
- Assets, resources, and financial status; and
- Education and skills.

Existing Immigration and Naturalization Service (INS) rules require immigration officials to examine all the applicant’s circumstances. Immigration officials are prohibited from finding that an individual is likely to become a public charge because of the existence or the absence of any one factor. For example, an immigration official could not deny lawful entry to a low-income immigrant as a public charge based solely on income. The immigration official would also need to review the immigrant’s history of

employment, resources, education, etc. The existing rule requires the “totality of the individual’s circumstances” to be considered in a prospective evaluation.<sup>2</sup>

***Current Policy on Public Charge and Public Benefits.*** In 1999, INS issued interim *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*. This guidance sought to ease growing public confusion over the meaning of the term “public charge” and its relationship to the receipt of federal, state, or local public benefits. Under the 1999 policy guidance, INS defined public charge to mean “the likelihood of a foreign national becoming primarily dependent on the government for subsistence.” The guidance listed two public benefits as evidence of an immigrant’s likelihood of becoming a public charge:

1. Receipt of public cash assistance for income maintenance; or
2. Institutionalization for long-term care at government expense.”<sup>3</sup>

Under the guidance, immigration officials are required to consider past use of these two public benefits, and only these two public benefits, in a public charge determination. Immigration officials must also consider all other circumstances, not just the use of these two public benefits, in determining whether an individual may become a public charge.

***Immigrants Excluded from Public Charge Determinations.*** Under existing law, some immigrants are not subject to public charge determinations, including:

- Naturalized citizens,
- Refugees,
- Asylees,
- Survivors of trafficking or domestic violence, and
- Most LPRs.

## Summary of the Final Rule

***New Policy on Public Charge and Public Benefits.*** The final rule revises and broadens the definition of public charge. Under the final rule, an immigration official will continue to weigh all factors (age, health, etc.) relevant to the immigrant applicant for adjustment of status to determine whether the immigration official believes that at any time in the future:

1. The applicant is *more likely than not* to receive one or more specific public benefits, listed below; and
2. The applicant will *more likely than not* receive the public benefit(s) for more than 12 months in the aggregate within any 36-month period.

If an immigration official believes the applicant, based on the totality of their circumstances, will more likely than not receive the specific benefit(s) for the indicated length of time, the applicant will be considered a public charge and denied the opportunity to legalize or adjust their status.

***The final rule rejects the existing public charge definition that requires immigration officials to evaluate the likelihood of an applicant becoming primarily dependent on the government for subsistence.***

***Public Benefits Considered in a Public Charge Determination.*** The final rule adds to the list of public health care programs and benefits that must be considered in a public charge determination. The final rule specifies that the following cash aid and noncash medical care, housing, and food benefit programs must be considered along with other factors in a public charge determination:

- Receipt of public cash assistance for income maintenance;
- Supplemental Nutrition Assistance Program (SNAP);
- Section 8 Project-Based Rental Assistance and certain other forms of subsidized housing; and
- ***Receipt of non-emergency Medicaid by non-pregnant adults*** (see next section for exemptions).

Under the final rule, an immigrant’s reliance on the listed public benefits must meet specific thresholds to be considered as a “heavily weighted negative factor” in a public charge determination. For example, an immigrant needs to receive non-emergency Medicaid benefits for more than 12 months in the aggregate within a 36-month period to be a heavily weighted negative factor in a public charge determination. However, unless specifically exempted in the final rule, an immigration official can consider past use of the listed public benefits in the totality of circumstances evaluation, regardless of whether the threshold has been met.

***Non-emergency Medicaid Exemptions.*** In addition to exempting *emergency* Medicaid services from a public charge determination, the final rule excludes the use of non-emergency Medicaid from a public charge determination for the following populations and under the following circumstances:

- Medicaid benefits received by an immigrant under 21 years of age;
- Medicaid benefits received by a pregnant person, during pregnancy and 60 days postpartum;
- Direct receipt of public benefits, including non-emergency Medicaid, by a member of an immigrant applicant’s household, so long as the applicant for adjustment of status is not listed as a direct beneficiary of the public benefit;
- School-based Medicaid services or benefits provided to individuals at or below the maximum eligible age for secondary education, as determined by State law;
- Services funded by Medicaid but provided under the Individuals with Disabilities Education Act (IDEA), a program providing free and appropriate public education to eligible children with disabilities;
- Public benefits, including non-emergency Medicaid, provided to foreign-born children of U.S. parents in the adoption process;
- Public benefits, including non-emergency Medicaid, used by immigrants (and their dependents) while enlisted in the U.S. Armed Forces and serving in active duty or in the Ready Reserve; and
- Any public benefit (such as state-funded Medi-Cal) that is not listed in the final rule.

In addition, the final rule excludes from a public charge determination public benefits that were also excluded under the 1999 policy guidance, if received before the effective date of the final rule.

***Types of Immigrants Affected by the Final Rule.*** The final rule primarily impacts undocumented immigrants applying for lawful residency status through the sponsorship of family members. These immigrants are subject to public charge determinations under existing law. In addition, LPRs that leave the U.S. for more than six months and reenter the U.S. may be subject to a public charge determination.

Under the final rule, additional groups would be subject to public charge determinations for the first time, including certain non-immigrants seeking to extend their current period of authorized stay in the U.S. or those seeking to transition to another non-immigrant status. For example, an individual

authorized to study in the U.S and then return to their country of origin, if their studies take longer than anticipated, this individual may seek an extension of their stay and would be subject to a public charge determination under the final rule.

## Impact of the Final Rule

***Most immigrants subject to public charge determinations are already ineligible to receive the health benefits that would designate them as a public charge.*** Most undocumented immigrants are ineligible for federally-funded Medicaid services; except for emergency Medicaid services, which are exempt from a public charge determination. Therefore, the inclusion of non-emergency Medicaid in public charge assessments should not have a significant impact on immigrants seeking to legalize their status.

The final rule may apply to LPRs that leave the U.S. for more than six months and then reenter the U.S. For these immigrants, prior enrollment in non-emergency Medicaid may be included in a public charge determination. In evaluating the proposed rule, the National Immigration Law Center (NILC) prepared materials to support the few immigrant categories subject to public charge determinations and who are eligible for federally funded, non-emergency Medicaid and other impacted programs. For more information, visit the [NILC](#) website. In addition, the California Department of Social Services (CDSS), Immigration Branch funds qualified nonprofit organizations to provide services to immigrants who reside in the state of California. For more information visit the [CDSS](#) website.

***State Funded Medi-Cal Programs.*** Currently, California provides comprehensive Medi-Cal coverage to low-income undocumented children up to age 19, using primarily state-only funding, offset in part by federal funds used to cover emergency Medi-Cal services. The final rule does not allow for the inclusion of Medi-Cal coverage for undocumented children in a public charge determination for either the parent or the child. First, the final rule states that immigration officials will not consider direct receipt of public benefits by the child of an applicant as a factor in a public charge determination. The final rule also excludes Medicaid use by individuals under age 21 from being considered in a public charge determination. ***Therefore, Medi-Cal coverage for undocumented, lawfully residing, or U.S. citizen children will not be considered in a parent's or an undocumented child's public charge determination.*** Second, the final rule states that the term "public charge" would only include receipt of any public benefit specifically listed in the final rule. State-funded medical programs are not listed in the final rule; therefore, these programs will not be included in a public charge determination.

The expansion of comprehensive Medi-Cal coverage to low-income undocumented young adults age 19-25 in 2020 will also rely primarily on state funds, offset in part by federal funds to cover emergency Medi-Cal services. ***Similar to the Medi-Cal expansion for undocumented children, the receipt of Medi-Cal by undocumented young adults through a state-funded medical program will not be included in a public charge determination under the final rule.***

***Health Status and Private Health Insurance Programs.*** While health is a factor in public charge determinations under existing law, the final rule changes how this factor is considered. Under the final rule, immigration officials will consider in a public charge determination any medical condition, including a disability, that affects an immigrant's ability to attend school or work, or otherwise care for themselves. The final rule also adds an evaluation of an immigrant's financial status as part of the evaluation of health and requires officials to evaluate the potential costs of treatment for the medical condition and whether an applicant has the resources to cover the anticipated future medical needs.

As part of an assessment of assets, resources, and financial status, the final rule includes, for the first time, private health insurance or the financial resources to pay for medical costs as a heavily weighted positive factor in a public charge determination. Conversely, the lack of private health insurance or the lack of financial resources to pay for medical costs is a negative factor under the final rule.

The final rule will take effect on October 15, unless implementation is stopped by one of the many legal challenges to the rule. The final rule will only apply to public benefits used after the effective date. For public benefits used prior to this date, the public charge policy outlined in the 1999 field guidance, described above, will remain in effect.

## Notes

<sup>1</sup> Section 212 of the Immigrant and Nationality Act (INA), Title 8 United States Code Section (U.S.C.) 1182.

<sup>2</sup> Title 8 Code of Federal Regulations (CFR) 245a.3

<sup>3</sup> 64 Federal Register 28689, (May 26, 1999)

### About ITUP

Insure the Uninsured Project (ITUP) is a Sacramento-based nonprofit health policy institute that for more than two decades has provided expert analysis and facilitated convenings for California policymakers and decisionmakers focused on health reform.

***The mission of ITUP is to promote innovative and workable policy solutions that expand health care access and improve the health of Californians, through policy-focused research and broad-based stakeholder engagement.***

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