

Immigration Policy: How are Health Centers Responding to Patient Needs? Policy Update

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National Immigration Law Center (NILC)



Our mission: to defend & advance the rights and opportunities of low-income immigrants and their family members.



Public charge

Brief History

- ▶ Public charge has been part of federal immigration law since 1882 but has historically been very limited in scope.
- ▶ In 2019, The Department of Homeland Security published regulations that expanded the meaning and application of public charge.
- ▶ The current administration has allowed the courts to block the 2019 public charge rule.



2019 Regulations - the Chilling Effect

Even before the rule went into effect, it deterred people in immigrant families from accessing benefits

- ▶ More than one in four adults in low-income immigrant families (26.2 percent) reported that they or a family member avoided a noncash government benefit program, such as Medicaid, the Children's Health Insurance Program (CHIP), the Supplemental Nutrition Assistance Program (SNAP), or housing subsidies in 2019 for fear of risking future green card status.

Hamutal Bernstein, et al, Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019 (Urban Institute, 2020)

What is the public charge rule now?

Definition: A public charge is a person who is primarily dependent on the government for support

USCIS Notice – Effective March 9th

USCIS is no longer applying the August 2019 Public Charge Final Rule. As a consequence, among other changes, USCIS will apply the public charge inadmissibility statute consistent with the 1999 [Interim Field Guidance](#).

Applicants and petitioners should not provide information or evidence related solely to the Public Charge Final Rule. That means that applicants for adjustment of status should not submit Form I-944, Declaration of Self Sufficiency, or any evidence or documentation required by Form I-944

<https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>

How is public charge inadmissibility determined?

The public charge assessment allows the U.S. government to deny an immigrant a green card or admission into the U.S. if they are likely to become a public charge

- ▶ The Department of Homeland Security (DHS) makes the determination based on the individual's current characteristics and circumstance
- ▶ No one factor is used to determine whether someone can be deemed likely to become a public charge.

Age

Health

Family
status

Education
and Skills

Employment

Affidavit of
Support

Who does public charge apply to?

- ▶ Public charge primarily affects family-based immigrants
- ▶ Many categories of immigrants are exempt from public charge, including:
 - ▶ Refugees and Asylees
 - ▶ VAWA Self-petitioners
 - ▶ People applying for or holding U and T visas
 - ▶ People granted SIJS
 - ▶ Others: <https://www.federalregister.gov/d/2019-17142/p-2859>

When does public charge apply?

A PUBLIC CHARGE ASSESSMENT IS MADE WHEN A PERSON:

- ▶ Applies to enter the U.S.
- ▶ Applies to adjust status to become a Lawful Permanent Resident (LPR)
- ▶ A green card holder leaves the U.S. for more than 180 consecutive days (6 months) and reenters

THE PUBLIC CHARGE ASSESSMENT DOES NOT APPLY WHEN A PERSON:

- ▶ Applies to become a U.S. citizen
- ▶ Renews their green card
- ▶ Applies to have the conditions removed from a marriage-based green card

The 1999 Field Guidance



The totality of circumstances

The guidance implements the totality of circumstances test:

- ▶ No one factor can determine whether someone is likely to become a public charge.
- ▶ Positive factors can outweigh negative factors

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1999 Guidance: Benefits

- ▶ The guidance limits consideration of benefits in public charge determinations to:
 - ▶ **Cash assistance for income maintenance**
 - ▶ **Institutionalization for long-term care at government expense**
- ▶ People "should not be asked to repay the cost of any benefits received in order to qualify for admission or adjustment"

Cash Assistance for Income Maintenance

Evidence of "primary dependence on the Government for subsistence"

- ▶ Assistance intended to pay for a persons' ongoing living expenses: CalWORKS, CAPI, SSI, General Assistance/Relief
- ▶ Does not include cash payments that are earned, like Social Security, or special purpose or supplemental payments, such as childcare subsidies

Long-term Care

- ▶ Examples: Nursing home care paid by Medi-Cal, public residential facilities such as state homes for people with severe mental illness
 - ▶ Does not include short periods of institutionalization for rehabilitation purposes



DACA & Potential Immigration Law Changes

Executive Action on DACA

“ The Secretary of Homeland Security, in consultation with the Attorney General, shall take all actions he deems appropriate, consistent with applicable law, to preserve and fortify DACA.”

- ▶ What does this mean?
 - ▶ The original DACA program is in full effect (renewals, initial applications, Advanced Parole),
 - ▶ The *Texas vs. United States* lawsuit, which is seeking to end DACA, is still a threat

Farm Workforce Modernization Act

Passed by the House on March 18

Creates temporary residency under Certified Agricultural Worker Status (CAWS) for undocumented workers (+spouse and children) who have performed as threshold amount of agricultural work and:

- ▶ Have been continuously present in the US since the date of the bill's introduction
- ▶ have not been convicted of certain crimes
- ▶ pass security and law enforcement background checks

Provides a pathway to lawful permanent resident status for people with CAWS who meet additional requirements for agricultural work

Adds employment protections for people with temporary agricultural work visas

Citizenship for Essential Workers Act

- ▶ Introduced in the House on March 17th
- ▶ Provides a pathway to LPR status for undocumented essential workers who pass a background check
 - ▶ Includes workers who lost work in essential positions due to the pandemic
- ▶ Essential workers are defined as including workers in:
 - ▶ Agriculture
 - ▶ Meat, fish and poultry processing
 - ▶ Manufacturing
 - ▶ Construction
 - ▶ Food
 - ▶ Health

The Dream and Promise Act

- ▶ Passed by the House on March 18
 - ▶ Passed House in 2019 but was not heard in the Senate
- ▶ Establishes a pathway to **citizenship** for:
 - ▶ DACA recipients and people who would have been eligible for DACA
 - ▶ Humanitarian immigrants with:
 - ▶ Temporary Protected Status (TPS); and
 - ▶ Deferred Enforced Departure (DED)

Resources

Community Education, Research and other resources on Public Charge:

<https://protectingimmigrantfamilies.org/>

Law and Policy:

<https://www.nilc.org/>