

Public Charge

What Is Public Charge?

Public Charge is a term used in immigration law to describe an individual who is dependent on the government. When determining if a person is likely to become a public charge, the Immigration and Nationality Act (INA) requires the government to consider a variety of factors, including the person's age, health, income/resources, family situation, education and skills. This is called the totality of circumstances test. The statute does not include an official formula for weighing the various factors; rather, the Federal official has significant discretion in deciding whether to approve or deny an application.

It is important to understand that the public charge assessment is determining whether, in the opinion of an immigration official, the person is more likely than not to become a public charge in the future. A person does not need to have used any benefits to be deemed likely to become a public charge.

What does the final Public Charge rule do?

The final rule changes the definition of public charge from a person dependent on the government for financial and material support to “a person who uses or receives one or more specified public benefits for at least 12 months in a 36-month period.” The Administration indicated that if a person uses more than one of the listed public benefits a month, then each benefit would count for a separate month (i.e. if a person is using both Medi-Cal and SNAP in one month, then it would count for two months).

The rule also creates new standards and definitions around the factors considered in the totality of circumstances test, making it harder for people with lower income, health conditions or less education to achieve a successful outcome. **The rule explicitly clarifies that receipt of or application for benefits on behalf of someone else does not constitute receipt of benefits.**

Who is subject to the Public Charge Assessment?

When an individual who is not exempt applies to enter the country or applies for lawful permanent resident (LPR) status (i.e. green card) they will be subject to the Public Charge test. Individuals who have become an LPR, will not be assessed for public charge when they apply to become a citizen. However, it is important to note that if somebody with LPR status leaves the country for more than 180 consecutive days (6 months), they can be treated as a new entrant and assessed for public charge and other grounds of inadmissibility when they seek to re-enter the country. *Please be aware that the Public Charge rule will not affect a majority of health center patients.* However, the chilling effect that arises from misunderstanding the final rule and its implications could lead many to cease accessing public benefit programs.

Many individuals residing in the U.S., including DACA recipients and people with TPS, are not subject to a public charge test when they apply for or seek to renew their status. However, if these individuals seek a green card, e.g. through a US citizen spouse, they could be subject to the public charge test.

Public charge does not apply to: Refugees, asylees, survivors of domestic violence, and victims of trafficking or other serious crimes, special immigrant juveniles, temporary protected status (TPS), and certain other groups.

What public benefit programs are included in the final rule?

The public benefits listed in the rule include federally funded Medicaid (exemptions listed below), SNAP – which in California is referred to as CalFresh, Section 8 vouchers & project-based assistance, public housing, and cash assistance programs like CAPI, SSI, General Assistance and TANF (CalWORKs). Cash assistance programs are the only state or local benefits that are considered. Please be aware that being enrolled in these programs, even if the recipient hasn't used the services, can be seen as a heavily weighted negative factor in the public charge assessment.

The following exemptions apply to the receipt of Medicaid benefits:

- Emergency Medicaid
- Health benefits received by a person under 21 years of age
- Health benefits received by a woman during pregnancy and for 60 days after
- Benefits received by active duty or Ready Reserve members of the armed forces and their spouses and minor children
- Benefits received while a person was exempt from public charge

Frequently Asked Questions

1. Does the final public charge rule include the health centers sliding fee scale as a factor to be considered?
A: No. the rule does not mention the sliding fee scale so it will not be part of the public charge assessment.
2. Is WIC and/ or CHIP included in the final public charge rule?
A: No neither CHIP nor WIC are included in the final rule. Unless a public benefit program is explicitly listed in the rule, you can assume it's an excluded benefit. This includes School-based nutrition services, Public education, including Head Start, ACA tax credits, EITC, and Medicare Part D subsidies.
3. Is Family PACT included in the final rule?
A: Any optional benefit provided by a state for which they seek federal reimbursement under their Medicaid program will be included (programs like MyHealthLA are excluded since they don't receive federal funding). Family PACT was approved as part of a Medicaid state plan amendment and thus does receive a federal match based on the percentage of people who may be eligible to receive federally-matched benefits. However, similar to Medi-Cal, adults who are not 'qualified' would be state funded, as well as LPRs, parolees, and VAWA self-petitioners during their first five years in status. Services for children under 21 and for pregnant women would similarly be exempt.
4. Would the public charge assessment look at use of the Every Women's Counts program?
No. The Every Women's Counts program in California is not funded through Medicaid and therefore does will not be considered in the public charge assessment. For those who are curious, funding derives from the state with a federal match from the Centers for Disease Control and Prevention.
5. Are individuals who access Medi-Cal services through the CA self-proclaimed PRUCOL definition impacted by the public charge rule?
A: No. self-proclaimed PRUCOL individuals receive state only funded Medi-Cal, thus these services would not be considered in a public charge test under the DHS rule.
6. Is the Ryan White program or Title X included in the public charge rule?
No. These programs are not explicitly mentioned in the rule, thus they are not included. Important to note that federally-matched full-scope Medi-Cal is the only health benefit included in the rule.
7. Does the rule include exclusions for the SNAP program similar to the Medicaid exclusions for children?
A: No, there are no exclusions listed for SNAP, thus it can be included as a negative factor in the public charge assessment for children who are enrolled in the program. But state-funded nutrition assistance like CFAP are not included in the rule.
8. Are Advance Premium Tax Credits received under the ACA included in the rule?
A: Receiving APCs is not a negative factor. However, it is both a positive factor and a heavily weighted positive factor to have private insurance. ACA benefits can help people overcome a health-related barrier even if the person gets subsidies (APTC's). ACA benefits are considered a "heavily weighted" positive factor only if the person does not receive APTC.
9. Would the use of benefits by family members affect the applicant when undergoing the public charge test?
A: No. Only the use of benefits by the applicant will be assessed under DHS' rule. For cash assistance received prior to February 24, 2020, a child's receipt may be attributed to parents if it is the household's sole source of support. For health care and all programs used on or after February 24, 2020 parents can continue to enroll their children into services without fear that it will impact their application to adjust to LPR status in the US.
10. When will the rule be implemented? How far back will the look-back be?
February 24, 2020. The use of benefits added by the rule will not be considered unless those benefits are used after the rule goes into effect. In assessing financial resources under the totality of circumstances test, an immigration agent can consider any past use of benefits. However, benefits use is a heavily weighted negative factor only if the person received benefits for 12 or more months out of the last 36.
11. Do you have any advice about what kind of information we should be providing to patients in our health center?
A: We encourage you to create a resource corner where patients can obtain information. You can access updated factsheets and materials from CPCA's Immigration Resource page (CPCA.org/immigration).