

# Examining the Public Charge Proposed Rule

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## Agenda

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- Context and Background
- Key Differences Between Current Guidance and Proposed Rule
- Potential Impacts of Proposed Rule

## Context and Background

## Overview of Public Charge Proposed Rule

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The Department of Homeland Security (DHS) released a proposed rule, *Inadmissibility on Public Charge Grounds*, which proposes to change how DHS determines whether immigrants — when seeking admission to the U.S., an extension of their stay, or adjustment of status to become a lawful permanent resident — are “likely at any time to become a public charge” (i.e., dependent on the government for financial support)



Being determined a “public charge” puts an individual’s immigration status at risk



The proposed rule departs from existing guidance by, among other things:

- Expanding the list of public benefits considered
- Increasing the importance of income and benefit use in the public charge analysis



The rule does not change eligibility for benefits but newly attaches consequences to use of benefits that some immigrants are eligible for

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



If finalized, the proposed rule would broadly impact consumers, providers, states, and localities

Comments due December 10, 2018

## Key Differences Between Current Guidance and Proposed Rule

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## Key Differences Between Current Guidance and Proposed Rule

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### New Populations Subject to Public Charge

- 1999 Guidance applies to the following populations:
  - Individuals seeking to legally enter the U.S.
  - Individuals legally in the U.S. and seeking to become a Lawful Permanent Resident (i.e., obtain a “green card”)
- Proposed rule **would add** the following populations:
  - Individuals seeking to extend a stay (e.g., extending a current visa)
  - Individuals seeking to change visa types (e.g., from a student to employment visa)



### New Public Charge Definition

- 1999 Guidance considers individuals a public charge if “primarily dependent” on benefits
- Proposed rule **would change** to if they “receive one or more public benefits”



### New Benefits Included In Public Charge Definition

- 1999 Guidance includes SSI, TANF, federal/state/local cash benefits, and institutionalization for long term care
- Proposed rule **would add** Medicaid, Medicare Part D Low Income Subsidy, Supplemental Nutrition Assistance, Housing Assistance and Subsidized Housing
- Proposed rule distinguishes between **monetizable** and **nonmonetizable** benefits and sets thresholds

Sources: Field Guidance on 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 (October 10, 2018), available at: <https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf>

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## Key Differences Between Current Guidance and Proposed Rule

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### New Tests to Determine if Someone is a Public Charge

- The proposed rule maintains a “totality of circumstances” framework and newly prescribes considerations under each of the following statutory factors:
  - Age
  - Health
  - Family Status
  - Assets, Resources, Financial Status
  - Education and Skills
- New in the proposed rule:
  - Immigrants who are working but have income under 125% of poverty are particularly targeted as this circumstance is weighted in the negative
- New **heavily weighted** negative circumstances include:
  - Current use of public benefits or use of public benefits during last three years
  - Having a medical condition likely to require extensive medical treatment

Sources: Field Guidance on 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 (October 10, 2018), available at: <https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf>

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## Public Benefit Definition

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The proposed rule would expand the list of public benefits considered in a public charge determination

The rule would establish standards by benefit category for the level of use that results in a countable benefit:



“Monetizable” benefits, tied to monetary thresholds



“Non-Monetizable” benefits, tied to durational thresholds

Benefit Programs	Existing (✓) and Additional Proposed (+) Benefits	Benefit Type
Supplemental Security Income (SSI)	✓	
Temporary Assistance for Needy Families (TANF)	✓	
Federal, state, or local cash benefit programs	✓	
Institutionalization for long-term care	✓	
Medicaid (exclusions listed on next slide)	+	
Medicare Part D Low Income Subsidy (LIS)	+	
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	+	

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## Health Benefits Excluded

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### Select Set of Medicaid Benefits

- Benefits paid for emergency medical conditions
- School-based Medicaid benefits
- Medicaid benefits under the Individuals with Disabilities Education Act (IDEA)
- Medicaid for certain children of U.S. citizens with citizenship pending

### CHIP

- DHS is seeking comment about whether CHIP should be included

### Marketplace Subsidies

The proposed rule indicates that DHS will **not** consider benefit use by an immigrant's dependents when determining whether the immigrant is likely to become a public charge; however, "chilling" effect anticipated. Benefit use by members of the Armed Services also will not be considered.

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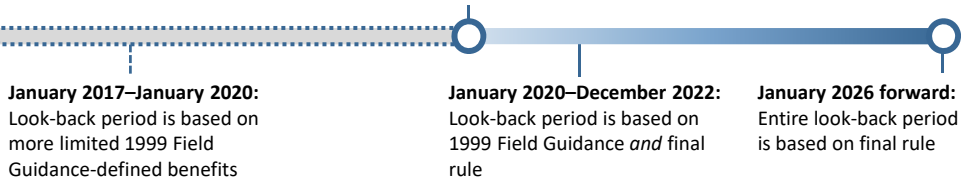
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## Effective Dates and Benefit Assessment Periods

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Assuming a final rule is effective January 1, 2020, this example outlines how a prospective determination could include negative weighting of both current and past benefit use

**January 1, 2020:**  
Rule Effective Date (for illustrative purposes)



- May 2016: Jane is living and working in the U.S.
- March 2019–December 2019: Jane receives Medicaid benefits
- February 2020: Jane applies for a green card

**RESULT:** Jane's use of public benefits between February 2017 and January 2020 is assessed under the terms of the 1999 Field Guidance (*does not include Medicaid*) and from January 2020 to February 2020 as defined by the final rule (*Jane used no public benefits during this period*)

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## Potential Impacts of Proposed Rule

## The Proposed Rule Could Have a “Chilling Effect” on Legal Immigrants and Their Families

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### Consumers

- The rule may **deter legal immigrants and their family members (including citizens) from using public benefits** they are eligible to receive due to:
  - The complexity of the rule’s structure
  - Discretionary application of the rule
  - Concern/distrust of immigration enforcement
- DHS acknowledges that the proposed rule could **increase poverty, including among families with citizen children**—and that immigrants foregoing benefits could experience:
  - Lost productivity
  - Adverse health effects
  - Medical expenses due to delayed health care
  - Reduced productivity and educational attainment

## Hospitals May See Uptick in Uncompensated Care

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### Hospitals

- **Loss of Medicaid revenue** as people drop or fail to apply
- **Increased uncompensated care** when people use hospital services
- 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

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## States and Localities May Experience Increased Implementation and Social Services Costs

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### States/Localities

- **Implementation costs**, including:
  - Costs related to re-working their Medicaid, human services, and/or Marketplace IT eligibility and enrollment systems and processes
  - Costs to update/develop systems to better track other benefit use and, potentially, share that information with DHS
- **Loss of state Medicaid revenues**
- **Added costs for health care, social services** if families increasingly rely on state and local services

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## Appendix

### Immigrant Eligibility for Medicaid, CHIP, Marketplace and Medicare Coverage

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

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

The proposed rule does not modify these standards



## Benefit Thresholds

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In assessing “monetizable” and “non-monetizable” benefit thresholds, DHS will consider both the amount and frequency of benefits used



### “Monetizable” Benefit Threshold

- 1+ benefits with a cumulative value >15% of FPL for one-person household within any consecutive 12-month period (approx. \$1,800/year)



### “Non-Monetizable” Benefit Threshold

- 1+ benefits for an aggregate of >12 months within a 36-month period (2 benefits in 1 month = 2 months)



### Combined “Monetizable” and “Non-Monetizable” Benefit Threshold

- 1+ benefits where the cumulative value is ≤15% of FPL for a one-person household within any consecutive 12-month period; AND
- 1+ (non-monetizable) benefit for >9 aggregate months within a 36-month period (2 benefits in 1 month = 2 months)

Immigrants may reach thresholds quickly. See appendix for examples.

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## Considerations in Public Charge Determination

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Factor	Standards/Considerations
Age	<ul style="list-style-type: none"> <li>▪ Whether the immigrant is between 18 and the minimum early retirement age (i.e., between 18 and 61)</li> <li>▪ Whether age otherwise makes immigrant more/less likely to become a public charge such as by impacting ability to work</li> </ul>
Health	<ul style="list-style-type: none"> <li>▪ Whether health makes the immigrant more/less likely to become a public charge</li> <li>▪ Whether diagnosed with condition that is likely to require extensive medical treatment or institutionalization</li> <li>▪ Whether diagnosed health condition will interfere with ability to provide and care for himself, to attend school, or to work</li> </ul>
Family Status	<ul style="list-style-type: none"> <li>▪ Household size</li> <li>▪ Whether household size makes person more/less likely to become a public charge</li> </ul>
Assets, Resources, & Financial Status	<ul style="list-style-type: none"> <li>▪ Whether household income is at least 125% of the FPL (based on household size)</li> <li>▪ If income is less than 125% of the FPL, whether total value of household assets and resources is at least 5 times the difference between household gross income and poverty level for the household size involved</li> <li>▪ Whether immigrant has sufficient household assets and resources to cover any reasonably foreseeable medical costs related to a medical condition that is likely to require extensive medical treatment, institutionalization, or interfere with ability to provide care, attend school, or work</li> <li>▪ Any financial liabilities</li> <li>▪ Any past receipt of public benefits</li> </ul>
Education & Skills	<ul style="list-style-type: none"> <li>▪ Adequate education and skills to obtain or maintain sufficient employment (if authorized for employment) to avoid becoming a public charge</li> </ul>

## Weighing Circumstances in Public Charge Determination

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The proposed rule outlines which circumstances weigh heavily for—or against—an immigrant’s determination as a public charge

### Heavily-weighted *positive* circumstances include:

- + Having financial resources, assets, and support  $\geq 250\%$  of the federal poverty level (~\$63,000 for a family of four)
- + Being authorized to work and currently employed with an income  $\geq 250\%$  of the federal poverty level

### Heavily-weighted *negative* circumstances include:

- Current receipt (or approval to receive) 1+ public benefits
- Receipt of 1+ benefits in the last 3 years
- Having a medical condition that is likely to require extensive medical treatment/institutionalization or interfere with work/school without insurance or financial resources
- Lack of employment (current, recent, or reasonable prospect)
- Having previously been found inadmissible/deportable based on public charge

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**Thank You**

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