



Immigrant Health Under Attack: Trump's Public Charge Rule

Wednesday, August 21, 2019



Dedicated to creating a nation where the best health and health care are equally accessible and affordable to all

Introduction



Claire McAndrew

Director of Campaigns
and Partnerships,
Families USA

Immigrant Health Under Attack: Trump's Public Charge Rule

Today's Agenda

- Introduction: Claire McAndrew
- Overview of the Public Charge Rule: Gabrielle Lessard
- Public Charge, Health, and Health Care: Cheryl Fish-Parcham
- Public Charge in the States: Seciah Aquino
- Questions and Answers

Housekeeping

- Today's presentation is being recorded
- The slides and recording will be made available
- To ask questions:
 - Type your question in the chat box

Overview of Public Charge Rule



Gabrielle Lessard

Senior Policy Attorney,
National Immigration Law
Center



Update: Public Charge

Gabrielle Lessard
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Who We Are

National Immigration Law Center (NILC)

- ▶ Our mission is to defend & advance the rights & opportunities of **low-income** immigrants and their family members.
- ▶ We combine policy analysis and advocacy, impact litigation and strategic communications to protect immigrants' rights and to advance their access to health care, education and economic opportunity.





Public Charge

Public Charge: Background



- A Public Charge has historically been a person dependent on the government for financial and material support
- Under guidance in effect since 1999, this has meant participation in:
 - Cash assistance for income maintenance
 - Institutionalization for long-term care at government expense

Who is Subject to Public Charge?

- ▶ Many immigrants are **exempt** from Public Charge inadmissibility, including:
 - ▶ Refugees and asylees;
 - ▶ survivors of trafficking and other serious crimes;
 - ▶ self-petitioners under the Violence Against Women Act; and
 - ▶ special immigrant juveniles



When Does the Inadmissibility Test Apply?

The **likelihood** that a person will become inadmissible as a public charge is assessed:

- when they apply to enter the US and
- when they apply to become a lawful permanent resident (LPR)
- ▶ There is no public charge test when an LPR applies for citizenship
 - ▶ But - an LPR who leaves the U.S. for over 6 months will be assessed when they return

Statutory Public Charge Test

- ▶ The inadmissibility test considers whether a person is likely to become a public charge **in the future**
- ▶ Based on all of the facts relevant to their ability to support themselves
- ▶ A person **does not have to have used any benefits** to be deemed likely to become a public charge





The DHS Regulations

Final Public Charge Rule: Overview

NEW DEFINITION

A dramatically different definition of public charge

TOTALITY OF CIRCUMSTANCES

New weighted factors of the totality of circumstances (TOC) test designed to make it harder for low and moderate income people to pass

ADDITIONAL BENEFITS

Additional public benefits programs can be considered by immigration officials.

Add Standards and Evidence to Statutory Factors

- **Age**
- **Health:** whether diagnosed with medical condition that could affect ability to work/study or require extensive care/institutionalization in the future
- **Family**
- **Financial resources:**
 - income at least 125% FPL or substantial assets (100% for active duty military)
 - Whether applied for or received any public benefit
- **Skills and work experience:** includes assessment of proficiency in English

Heavily Weighted Factors



Negative:

- ▶ Authorized to work but not working and not a full-time student, unable to demonstrate recent employment or reasonable prospect of employment
- ▶ Has received or been certified to receive a public benefit for more than 12 months out of the last 36 months
- ▶ Has been diagnosed with a medical condition that could interfere with work/school or person's ability to care for themselves or that could require expensive treatment/institutionalization
- ▶ Uninsured without the prospect of receiving private insurance/paying for care
- ▶ Previously determined to be a public charge by Immigration Judge or Board of Immigration Appeals

Heavily Weighted Positive Factors



- ▶ Household has income or resources of at least 250% of FPL (>\$64k for family of 4)
- ▶ Has private health insurance that does not include ACA plans subsidized by premium tax credits

Which benefits are considered?

- ▶ Federal, state, local or tribal **cash assistance** for income maintenance, and
- ▶ certain **noncash** medical, housing and food benefits:
 - ▶ Medicaid (with exceptions)
 - ▶ SNAP
 - ▶ Section 8 (vouchers & project-based)
 - ▶ Public housing



Excluded Benefits

Everything not listed!

- ▶ School-based nutrition services
- ▶ WIC
- ▶ tax credits: ACA, EITC
- ▶ Medicare Part D financial assistance
- ▶ State and local non-cash programs
- ▶ **Benefits received by someone else**



Exceptions

- ▶ Services received for an emergency medical condition
- ▶ 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 while a person was exempt from public charge

Things to Keep in Mind

- The rule is not in effect yet.
 - Applies only to applications submitted on or after **October 15, 2019**.
 - Newly named benefits used prior to October 15 will not be considered.
- Not everyone is subject to the rule.
 - Many immigrants are exempt from the public charge inadmissibility ground.
 - Benefits used by family members will not be counted.
- Positive factors can be weighed against negative factors in this forward-looking test.

Advocacy Asks

- Engage MOCs to act
 - Ask your MOCs to cosponsor **HR 3222 - “No Federal Funds for Public Charge”**
 - Ask your MOC to speak out in opposition to the rule.
- Partner & Community Education
 - Fight fear with facts - start updating your resources and materials, and figure out how to triage issues and questions from community members and allies.
 - Let us know what questions you are getting from community members.

Tools and Resources for Communities

[Let's Talk About Public Charge](#)

[Getting the Care You Need](#) (translations coming soon)

[You Have Rights: Protect Your Health](#) ([Spanish](#)) ([French](#)) ([Chinese](#))
([Arabic](#))

TEMPLATES AVAILABLE FOR ORGANIZATIONS

- Customize for YOUR community. Add YOUR branding.
- Add contact information and more details on other programs your state/city offers immigrant families.
- Email Kat Lundie (lundie@nilc.org) to request a template. Please be patient as we fulfill your request.

Organizational Resources

Updated public charge resources based on the final text

- AVAILABLE NOW: [Communications Toolkit](#)
- AVAILABLE NOW: [Digital Toolkit for Rule Finalization](#)

If you have additional questions on the DHS finalized rule, you can submit them here:

<https://docs.google.com/forms/d/e/1FAIpQLSc12-q5LTNtSkwuHL4J5r7XLPxNdUDiRSD6gosebAn1VbuRrg/viewform>

(This form is for organizational partners. We cannot give advice in individual cases.)



Cheryl Fish-Parcham

Director of Access
Initiatives,
Families USA

The Public Charge Rule's Harms to Health and Health Care

The New York Times

Trump's Policy Could Alter the Face of the American Immigrant

Trump administration releases new 'public charge' rule making it easier to reject immigrants

BY CHRIS MILLS RODRIGO - 08/12/19 09:38 AM EDT

579 COMMENTS

- 1) Discourages use of Medicaid
- 2) Negatively weights medical conditions and disabilities
- 3) Positively weights private insurance, but not marketplace coverage
- 4) Use of bonds to protect the government, but not provide care
- 5) Impact on states counties, and safety net providers

Sections

The Washington Post
Democracy Dies in Darkness

Sign In

Immigration

Trump administration aims to make citizenship more difficult for immigrants who receive public assistance



Discourages Use of Medicaid

Likelihood of an adult using Medicaid over his/her lifetime is **one new factor** in a public charge determination

DOES NOT APPLY TO:

- 1) Emergency Medicaid
- 2) Pregnant women or for 60 days after giving birth
- 3) Benefits received *before October 15*

Mostly will apply to future use of Medicaid

Most adults must be lawful permanent residents (LPRs) for 5 years to get Medicaid

But:

LPRs out of the country for 6 months



“Totality of circumstances” test considers likelihood of applicant using Medicaid in the future

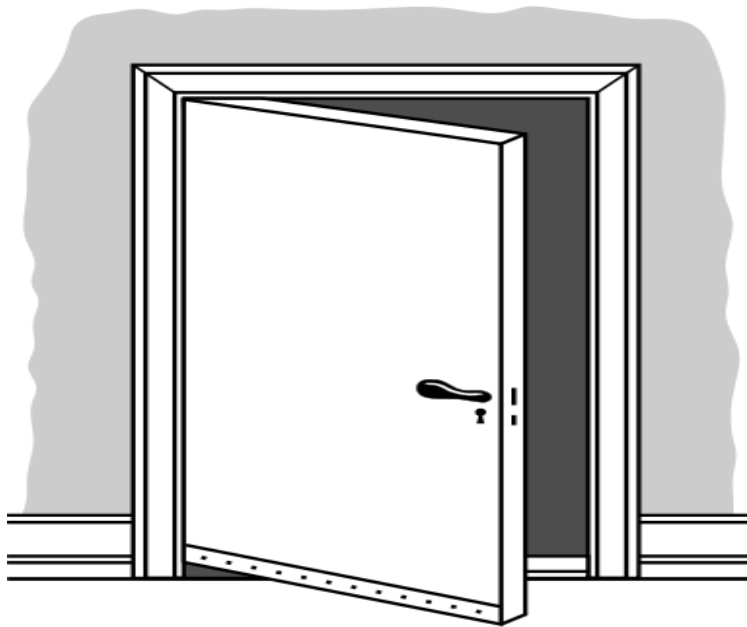


Public Charge

Negatively Weights Medical Conditions and Disabilities

Open Door for Prejudice

“Evidence of a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide and care for himself or herself, to attend school, or to work upon admission or adjustment of status” – **heavily weighted negative** factor unless the person will have private insurance without premium credits or has means to pay.



KHN Morning Briefing

Summaries of health policy coverage from major news organizations

In Suit Against New Immigration Rule, California Claims Trump's 'Public Charge' Change 'Weaponizes Health Care'

Source: Kaiser Family Foundation







DHS will Have Too Much Discretion

- 1) To determine likely course of a medical condition
- 2) To decide if a disability will interfere with care, or school, or work

national Trends In Disability Employment:
Comparison of People With and Without Disabilities
(April 2018 and April 2019)



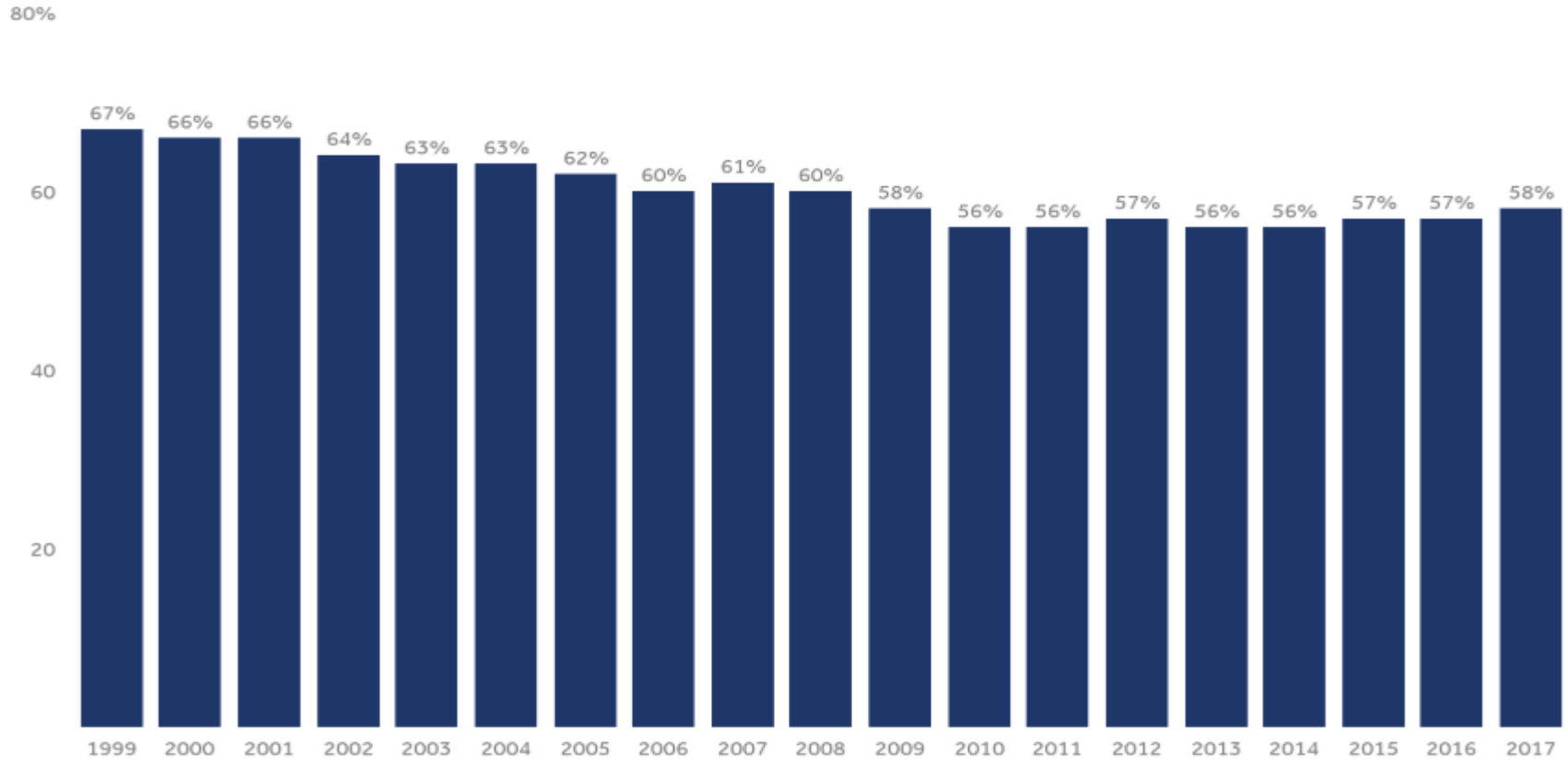
APRIL 2019	Labor Force Participation Rate			Employment-Population Ratio			
		Apr '18	Apr '19		Apr '18	Apr '19	
	 PWD	33.6	33.3	% change ↓ -0.9	 PWD	30.6	30.9
 PWOD	76.6	76.8	% change ↑ 0.3	 PWOD	73.8	74.3	% change ↑ 0.7

* PWD – People with disabilities; PWOD – People without disabilities
Source: Kessler Foundation/University of New Hampshire Institute on Disability



Considering Private Insurance A Positive Factor Only Without Premium Credits is Unfair

Percent of Nonelderly Population Enrolled in Employer-Sponsored Coverage, 1999-2017



Source: Kaiser Family Foundation analysis of the National Health Interview Survey, 1999-2017. • [Get the data](#)
• [PNG](#)

Peterson-Kaiser
Health System Tracker



The Rule Unfairly Favors Richer People

Employer-based health insurance, HSAs, HRAs and FSAs are favored and subsidized as a tax-free benefit

Bonds of at least \$8100 will help some people avoid a public charge determination, but won't get them health care.

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Rule Will Cause Problems for Safety Net Providers, States, and Localities

Increased Burden

- Uncompensated care burden will increase

All Hands On Deck

- All hands needed to help educate the public and Medicaid eligibility workers about who is NOT affected

Join efforts!

- Join efforts to push back against this rule

Public Charge in the States



Seciah Aquino

Senior Policy Manager,
California Immigration
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Public Charge & The California Response

Seciah Aquino, DrPH

Senior Manager | Health & Public Benefits

California Immigrant Policy Center

National PIF Campaign



CA PIF Coalition

CA PIF: Strategy

1. Creation & Coordination

2. Implementation

3. Policy Change



CA PIF: Working Groups

1. Outreach & Education
2. Communications
3. Legislative Advocacy
4. Administrative Advocacy
5. Legal Capacity



CA Government in Action

1. Effective Outreach and Education
2. State Resolution – ACR1
3. Inter- agency Coordination
4. Funding Allocation for Resources
5. Agency Convening Authority
6. Litigation



What actions can other states take?





1. Ensure that families have access to timely and accurate information about the public charge rules, through front-line staff trainings, community outreach, and inter-agency coordination.
2. Ensure that families directly or indirectly impacted have access to accurate legal counsel & alternative public benefit resources.
3. Enact policies to protect sensitive locations. Clearly mark/declare safe spaces.
4. Lead a comprehensive analysis of statutory schema regarding privacy and confidentiality of personal information in government databases that ICE may access.
5. Monitor state/ local enrollment data to identify growing unmet needs in the community - in real time.
6. Structural change: expand access to state funded public benefit programs .
7. Support a state resolution.

Thank You.

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Questions?



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