

Update on Public Charge Final Rule: Implementation February 24, 2020



February 24, 2020

Report to Family and Human Services Committee

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Family and Human Services Committee Report

Public Charge Final Rule Update



LONG-ANTICIPATED PUBLIC CHARGE RULE TO BE IMPLEMENTED FEBRUARY 24, 2020

On January 27, 2020, the Supreme Court lifted a preliminary injunction that prevented implementation of the Department of Homeland Security's new "Inadmissibility on Public Charge Grounds" rule while lawsuits made their way through the court system. While additional litigation continues, the rule will take effect on February 24, 2020, and residents will begin to be actually affected.

EHSD has been – and continues to be – preparing for the potential impact of this rule on our customers and the community. EHSD is committed to supporting the needs of all community members who are eligible for our services, regardless of immigration status. One of our department's core values is to embrace diversity, honoring individual differences and equal treatment for all. We will continue to encourage community members to seek the services they need.

BACKGROUND

The term "public charge" is used to indicate a person who may be likely to become dependent on the government for subsistence. A public charge determination can be used as grounds to reject a legal immigrant's application to keep his/her legal status to stay in the U.S. or to become a Lawful Permanent Resident (obtain a green card).

Historically, an immigration official would look at all of a person's circumstances, including income, employment, health, education and skills, family situation, and whether a sponsor signed an "affidavit of support" promising to support the person. Officials would also look at whether the person used certain public benefit programs, such as SSI/SSP, cash assistance or long-term care Medi-Cal.

On October 10, 2018, the Department of Homeland Security (DHS) published proposed changes to these criteria, overturning more than a century of existing policy and practice for determining who may be considered for public charge when applying for legal permanent residency or a change in visa status. Under then-current law, only cash-based assistance and long-term care benefits were considered in determining public charge risk. The proposed rule dramatically expanded the list of potentially qualifying factors to include critical supports such as non-emergency Medicaid (Medi-Cal), the Supplemental Nutrition Assistance Program (CalFresh) and Section 8 vouchers and other housing assistance programs.

Nearly a quarter of Contra Costa's over 1.1 million community members were born outside of the United States, a figure that represents the area's diverse population.

History of Public Charge Rule Change Inadmissibility on Public Charge Grounds

- *10/10/18: Department of Homeland Security published proposed Public Charge rule changes in the Federal Register and opened period for public comments.*
- *12/10/18: Public Comment period closed (Contra Costa County Board of Supervisors submitted Public Comment to OPPOSE proposed rule on 12/07/2018.)*
- *8/14/19: Department of Homeland Security published Final Rule, to become effective on October 15, 2019.*
- *10/11/19: Implementation of Final Rule halted by preliminary injunction, while lawsuits against the rule make their way through the court system.*
- *1/27/20: Supreme Court lifted the injunction, allowing implementation of the Final Rule, even as lawsuits continue to go through the courts.*
- *2/24/20: Implementation begins.*

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Almost half of the children in the county (age 0-17) live with at least one parent who was born outside the United States. The parents of these children include naturalized citizens, green card holders, and those who are aiming to become citizens; the children are largely U.S. citizens. Most immigrants who are not lawfully present are not eligible for public benefit programs. However, for people who are eligible, public benefit programs such as CalFresh, non-emergency Medi-Cal and housing assistance are frequently used by working families to help them stay healthy and remain productive. Access to critical benefits is often necessary for a short time in order to help immigrants become assimilated and ultimately prosper. In some cases, the public charge changes may lead families to feel they must choose between getting food, health care and services they need, and obtaining the citizenship they are legally on track to achieve.

The Contra Costa County Board of Supervisors submitted a public comment in OPPOSITION to the changes when they were proposed last year, based on our values as a welcoming county and concern about the negative health and economic impacts the changes could have on our county's entire population.

FINAL RULE: "INADMISSABILITY ON PUBLIC CHARGE GROUNDS"

On August 14, 2019, following a review of 260,000+ comments that were submitted (mostly in opposition), DHS formally published a Final Rule on the changes contained in its "Inadmissibility on Public Charge Grounds" proposal. The final rule amends regulations on how DHS will determine admissibility of an immigrant applying for admission to the United States or for adjustment of status (applying for a green card).

The Final Rule:

- Adds new **heavily weighted factors** to the totality of circumstances considered, including
 - Negative weight for receipt or use of one or more designated public benefits for more than 12 months in the aggregate within the prior 36 months
- **Expands the list of benefit programs** that will be counted, to include
 - Medi-Cal, *excluding*
 - Emergency Medi-Cal
 - Medi-Cal for children under 21
 - Pregnancy and post-partum Medi-Cal
 - CalFresh
 - Section 8 Housing Assistance under the Housing Choice Voucher Program
 - Section 8 Project-Based Rental Assistance
 - Subsidized public housing

Some Programs are Excluded From the Final Rule

- *Even with the new rule in effect, many EHSD programs are excluded from the Public Charge test:*
- *Medi-Cal for children under 21*
 - *Emergency and pregnancy Medi-Cal (including up to 60 days post-partum)*
 - *Women, Infants and Children (WIC)*
 - *Any benefits under CHIP or Contra Costa Cares*
 - *Head Start*
 - *Free and reduced school lunch programs*

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The final rule was scheduled to take effect on October 15, 2019. However, on October 11, three federal courts imposed nationwide preliminary injunctions that suspended implementation of the new rule while various lawsuits make their way through the courts. The last of those injunctions was overturned by the Supreme Court on January 27, 2020, paving the way to implementation.

Effective February 24, 2020, the U.S. Citizenship and Immigration Service (USCIS) will apply the new rule to green card or visa applications postmarked on or after February 24. The look-back at benefits received during the last 36 months will apply to newly-added benefits received after February 24, 2020.

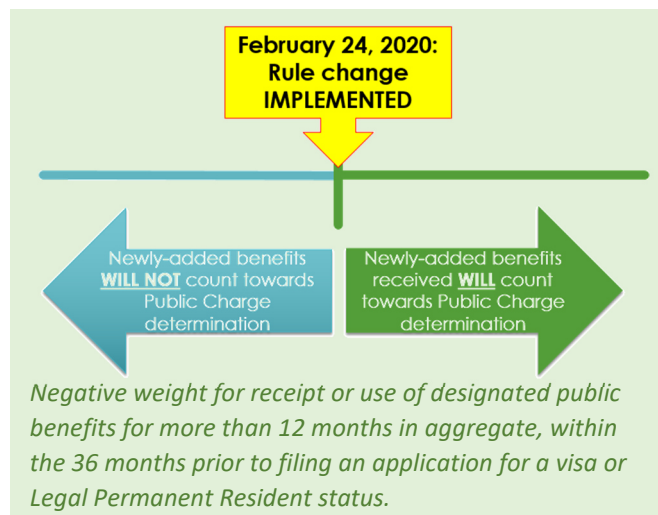
THE “CHILLING EFFECT”

Although the actual changes will only begin to take effect on February 24, the specter of the Public Charge proposal has impacted the community for a long time. A “leaked draft” of proposed changes was reported as far back as February 2018, and the Federal Register indicated that a proposal was sent to OMB for review on March 29, 2018.

In a 2018 Children’s Partnership survey of health care providers in California, respondents reported a two-thirds increase in parents’ concerns about enrollment in Medi-Cal, WIC, CalFresh and other public programs, and 40% expressed interest in opting out of the programs. They also noted a 42% increase in skipped scheduled health care appointments.

EHSD has been able to collect limited data tied directly to a chilling effect, primarily due to privacy parameters in eligibility determination and case management. The district offices have shared anecdotal data over time, but not enough to create a detailed analysis. We are most concerned about mixed status families where adults may pull an entire family out of a program, even though the children are/remain eligible and not affected by Public Charge. We

The 36-Month Lookback Timeline



A Chilling Effect on Immigrant Families: Health Care and Public Benefit Programs

- In a 2018 survey of health care providers in California, respondents reported:
- 67% increase in parents’ concerns about enrollment in Medi-Cal, WIC, CalFresh and other public programs
 - 40% of parents expressed interest in opting out of the programs
 - 42% increase in skipped scheduled health care appointments

The Children’s Partnership. (2018). California Children in Immigrant Families: The Health Provider Perspective. Retrieved from: <https://www.childrepartnership.org/wp-content/uploads/2018/03/Provider-Survey-Infographic-.pdf>

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believe this may be occurring to some extent in CalFresh and are further reviewing the trends.

The proposed public charge changes are primarily directed toward applications for Legal Permanent Residency for those already in the United States. These applicants represent a relatively small segment of the immigrant population. However, there could be an overall chilling effect, causing uncertainty and confusion even among non-affected immigrant families about using public programs for themselves and their children. Not only would disenrollment or foregone enrollment lead to worse health outcomes and greater poverty risk for the families foregoing benefits, but public health at-large could be affected by sicker individuals in the community and increased emergency room use. Additionally, there could be economic costs in the county due to decreased revenues to health care providers, pharmacies, groceries and other retail providers; reduced tax revenue as a result; uncompensated medical care; and increased costs for organizations serving the immigrant community.

In light of the Final Rule, and in an effort to dampen the chilling effect, EHSD has undertaken communications messaging to staff and community members that emphasizes:

- The new rule affects a limited number of people.
- The new rule does not affect every benefit program.
 - Notable exemptions are Medi-Cal for children under 21, emergency and pregnancy Medi-Cal (including up to 60 days post-partum), WIC, any benefits under CHIP or Contra Costa Cares; Head Start and free and reduced school lunch programs
- Benefits received by family members, such as children, are not counted against the applicant for a green card (unless those family members are also applying for a green card).
- We encourage individuals and families to seek legal guidance before making a very important decision regarding health insurance and other benefits.

“INADMISSABILITY ON PUBLIC CHARGE GROUNDS” IS PART OF A BROAD IMMIGRATION POLICY

In addition to the imminent change, several other proposed public charge rule changes have been put forth since 2018 and remain in the regulatory pipeline. For instance, on May 3, 2019, Reuters reported that the Department of Justice is considering changes to long-standing policy that will make it easier to deport legal permanent residents who have used public benefits. This is distinct from “Inadmissibility on Public Charge Grounds” rule that was just implemented; it has not yet been posted to the Federal Register.

A central feature is the expansion of the types of benefits that may be considered for “public charge.” These supportive benefit programs, which are administered by the County, help struggling, low-income individuals feed their families and themselves, stay healthy, and ultimately become self-sufficient.

EHSD IS WORKING WITH CCHS AND COMMUNITY PARTNERS TO SUPPORT THE COMMUNITY

It is important to note that there are no changes to EHSD or Contra Costa Health Service’s current policy and practice of determining eligibility and administering programs and services. There are no changes to our processes, rules, or eligibility standards pertaining to immigration. However, we understand that members of immigrant communities may have concerns, and we are encouraging them to consult reliable sources, such as trained immigration attorneys, to discuss their specific situations.

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EHSD and CCHS have been working with our community partners throughout the Public Charge proposal period, and are continuing to post public charge updates, information and resources to our websites ehsd.org and cchealth.org. Additionally, both departments have been training staff on Public Charge over the past several months, including almost one-third of EHSD Eligibility Workers.

Now that the Final Rule will be implemented, EHSD is taking the following additional steps:

- Training of staff is being amplified through in-person and Webinar sessions.
- EHSD.org has been updated to include the latest information, joint EHSD/CCHS press release and community resources.
- The Public Charge video on EHSD.org, designed for clients to view, has been updated and is being reposted to the Web site.
- Public Charge community flyers are being updated and will be distributed.
- Collaboration with CCHS and Community Partners continues. The Public Charge Partnership Group is being reconvened for increased clarity on the new rule and coordination of efforts, and a community forum is being planned.
- We continue to identify opportunities for further understanding of the Public Charge rule, including legal resources dedicated to the topic.

Working with our partners, we are analyzing and tracking the many immigration proposals and initiatives of the federal administration. We will keep you apprised of developments as we continue to assess impact while providing ongoing support to our community members. For the latest information on immigration and public charge, please visit our landing page at www.ehsd.org/charge.

Key Points to Remember

- **On February 24, 2020, the Department of Homeland Security (DHS) will change Public Charge determinations:**
 - Add new heavily weighted factors
 - Add to the list of benefit programs that will be considered
- **Programs that are currently considered:**
 - SSI/SSP
 - Long-term Care Medi-Cal
 - Cash Assistance Programs
- **Benefit programs that will be added:**
 - CalFresh (also known as SNAP, EBT, Food Stamps)
 - Federal Public Housing and Section 8 Assistance Programs
 - Medi-Cal benefits, except for emergency services and Medi-Cal received by children under 21 years old, pregnant women, and new mothers
- **Even with the new rule in place, the following individuals DO NOT take the Public Charge test:**
 - Legal Permanent Residents or “LPRs”, also known as green card holders, with certain exceptions
 - Refugees, Asylees, and Temporary Protected Status (TPS) holders
 - Self-petitioners under the Violence Against Women Act
 - Special Immigrant Juveniles, T (Victims of Human Trafficking) & U (Victims of Crimes) Visas