

Public Charge Rules: Overview & Takeaways

MassPIF Campaign Call
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Protecting Immigrant Families Campaign (PIF)

- National campaign
 - www.protectingimmigrantfamilies.org
- Massachusetts campaign led by:
 - **Mass. Immigrant and Refugee Advocacy Coalition (MIRA), Mass Law Reform Institute (MLRI), Health Care For All (HCFA), Health Law Advocates (HLA)**
- Join the campaign!: <http://bit.ly/PIFCampaign>
- Mass. comment aid: <http://bit.ly/PIF-MA>

“Culture of Fear”

Immigrants, refugees too afraid to seek critical help from food pantries, domestic violence resources



<https://www.bostonglobe.com/metro/2017/04/26/immigrants-refugees-too-afraid-seek-critical-help-from-food-pantries-domestic-violence-resources/JrOJqOrYtHYeedLid9I69N/story.html>

Top Three Messages

➤ *Nothing has changed!*

- Existing rules are still in place.
- The proposed rule will not take effect for many months (at the earliest)

➤ *Keep your public benefits!*

- There is no advantage to disenrolling now.

➤ *We're fighting back!*

- And you can join us.

What is “Public Charge”?: Current Policy

- Current definition refers to a person who is likely to become primarily dependent on the government for subsistence examining a totality of circumstances
- Can be the basis for denying “admission”
 - Non-immigrant or immigrant visas
 - Green Card

What is “Public Charge”?: Proposed Rule

New Definition for “Public Charge”

An individual who is, “likely at any time *in the future* to receive one or more,” of listed public benefits

Current Policy: Benefits

An individual who is likely to become *primarily* dependent on the government for subsistence, as demonstrated by either the receipt of:

(1) Public cash assistance for income maintenance: TANF, SSI, or similar state and local programs

OR

(2) Institutionalization for long-term care at government expense

Current Policy: Affidavit of support, I-864

- Filed by sponsor of intending immigrant showing income at least 125% of the federal poverty level (FPL)
- Properly filed I-864 is *usually sufficient* to find a person will not be a public charge

Proposed Rule: Overview

- DHS proposing a more restrictive test to get a:
 - Green card (LPR), visas (immigrant/non-immigrant)
- “Totality of the circumstances” test continues
 - Highly discretionary
- *Prospective* determination continues
 - Is applicant “*likely at any time in the future*” to receive a public benefit? Past benefits = evidence
- New draconian *income* requirements
- Does not apply to many immigrants:
 - People who *already* have green cards/LPR status
 - Many “humanitarian statuses” are exempt

Proposed Rule: Who is Subject?

- Those seeking lawful permanent resident (LPR) status through a family petition
- Certain individuals seeking LPR status through an employment petition
- Individuals seeking a visa or looking to change or extend their status
- Returning LPRs who have been abroad for more than 6 months

Proposed Rule: Who is *not* Subject?

Examples:

- Refugees/Asyees
- VAWA self-petitioners
- U or T visa beneficiaries
- Individuals applying for or renewing TPS
- Special Immigrant Juveniles

**However...if people with any of these statuses seek LPR or visa status on a different basis, then they could be subject to public charge.*

Proposed Rule: Affidavit of support, family, state/local

- Affidavit of Support loses weight
 - Family support won't be heavily weighted under 250% FPL
- Rule does not focus on:
 - State and local non-cash benefits
 - Other family members (except as relevant to family size and income level)

“Totality of circumstances”: Same test, new emphasis:

- Age
- Family status
- Assets and financial status
- Income and employment
- Education and skills
- Health diagnosis/disability status
- Private health insurance
- Sponsorship

No single factor will be determinative

Proposed Rule: “Monetized benefits” subject to public charge

- Cash assistance programs (TANF, SSI)
- Supplemental Nutritional Assistance Program (SNAP)
- Section 8 Housing

When:

- the value of the benefit >15% of Federal Policy Guidelines (\$1,821 for 2018); and
- received for 12 consecutive months

Proposed Rule: “Non-monetized benefits” subject to public charge

- Medicaid (Non-Emergency)
- Any benefit for long term institutional care
- Subsidies under Medicare Part D
- Housing Subsidies

When:

- Any benefits received for an *aggregate* of 12 months during a 36 month period.

Proposed Rule: Health-related factors

- Presumptions about ability to work and care for oneself
 - Age: Under 18 or above 65
 - Health status: Sick or disabled and not privately insured (“medical diagnosis”)
 - “Heavily weighed negative factor”

Proposed Rule: Health coverage

➤ **Health coverage = public charge**

- Medicaid (non-emergency)
- Subsidies for Medicare Part D
 - “Extra Help,” AKA Low-Income Subsidy/LIS

➤ **Health coverage ≠ public charge**

- Emergency Medicaid (MassHealth Limited)
- Tax credits under the Affordable Care Act
- CHIP (to be determined, but not right now)
- State and local health coverage programs

Proposed Rule: Health coverage in Mass.

➤ We believe “public benefits” definition would not include:

- Health Safety Net
- Connector Care
- MassHealth Limited
- Immigrants covered under fully state-funded plans (e.g. Family Assistance for PRUCOL)

Top Five Takeaways

- How the rule operates *in practice* is what will matter
- Enormous *discretion* for decisionmakers
- *Prospective* in focus
- *Complicated* (!!!)
- Emphasis on *income and assets*
 - Possibly more problematic than inclusion of additional public benefits

Questions?

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