



## Access to Health Care, Food, and Other Public Programs for Immigrant Families under the Trump Administration

### *Things to Keep in Mind When Talking with Immigrant Families*

Last revised FEBRUARY 8, 2018\*



Since President Trump's inauguration in January 2017, his administration's actions with respect to immigration have caused tremendous fear in immigrant communities, undermining trust in government programs and chilling access to health care, food, and other critical benefits and services.

Trump's reign of terror on immigrants and their families already has caused lasting damage to our country. Immigration-related executive orders (including a draft order on immigrants' access to public benefits that was leaked to the media in January 2017 but that hasn't actually been issued), aggressive immigration enforcement actions, harmful and derogatory statements about immigrants and refugees, and proposals to restrict family-based immigration have terrified communities across the United States. We have heard numerous reports of immigrant families being afraid to seek services that they or their U.S. citizen children need, disenrolling from critical programs, and being reluctant to continue treatment for serious illnesses.

NILC is vigilantly monitoring the Trump administration's changes to existing policy. In early January 2018, the U.S. State Department revised its Foreign Affairs Manual (FAM, or "State Department instructions") on "public charge." These revised State Department instructions underscore the administration's interest in restricting

family immigration and deterring families from securing critical services. We also learned that U.S. Citizenship and Immigration Services (USCIS) is drafting a Notice of Proposed Rulemaking (NPRM), proposing changes to the federal government's longstanding public charge policy.<sup>[1]</sup> The proposed rule has not yet been published and may not be implemented until it becomes final, which will take additional time.

This issue brief is intended to clarify what *has* and has *not* changed with respect to the policies affecting immigrants' access to health care, nutrition, and other critical programs. We invite you to use it as a resource when you speak with immigrants and immigrant families. It is important to monitor how changes to public charge policy (or rumors about such changes) are affecting individuals, families, communities, and community-based organizations. Please share with us what you are hearing, via email at [publiccharge@nilc.org](mailto:publiccharge@nilc.org).

## What is public charge?

Public charge is a ground of inadmissibility (to the U.S.) that has existed for more than 100 years. Under current policy, certain non-U.S. citizens who are seeking to enter the U.S. or to obtain lawful permanent resident (LPR) status must show that, based on all their circumstances, they are not likely *in the future* to rely on the government for subsistence.

***Overall circumstances considered.*** The public charge statute — which cannot be changed by an executive order or the issuing of regulations — requires immigration officials to look at all factors that relate to noncitizens' ability to support themselves, including their age, health, income, assets, resources, education/skills, family to support, and family who will support them. They may also consider whether a sponsor has signed an affidavit of support (or contract) promising to support the noncitizen.

Since the test looks at the person's overall circumstances, no one factor is definitive. Any negative factor, such as not having a job, can be overcome by positive factors, such as having completed training for a new profession.

***FAM now allows consideration of noncash benefits.*** Almost 20 years ago, the government clarified that only monthly cash assistance for income support or institutionalization at government expense (e.g., long-term care paid for by Medicaid) are relevant to consider in this test. However, the revised instructions for State Department officials abroad now indicate that noncash benefits may also be considered as part of the "totality of the circumstances" test. Under these instructions, a dependent family member's or sponsor's use of benefits may also be considered.

These instructions apply only to individuals who are seeking to enter the U.S. from abroad or who must go abroad to process their application for LPR status (see below for more information).

***Deportation based on public charge?*** The grounds for deporting an immigrant based on public charge are

extremely narrow. They apply only to immigrants who become a public charge during their first five years after admission to the U.S., for reasons that existed beforehand.<sup>[2]</sup> Under current policy, all three of the following conditions must also be met: (1) the use of cash assistance or long-term care needs to have created a legal debt; (2) the immigrant or sponsor must have received a notice to repay the debt within the five-year period; and (3) the immigrant or sponsor needs to have refused to repay the debt after the government took legal action and won.

Even if some of these rules change, LPRs could still show that their need for benefits was based on something that came up after they were admitted — for example, pregnancy, an accident, or a job loss.

## Key points to keep in mind

- **Some immigrants are not subject to the public charge determination.** Under federal law, which cannot be changed by issuing a regulation or administrative guidance, the following categories of noncitizens are not subject to a public charge test: refugees; asylees; survivors of trafficking, domestic violence, or other serious crimes (T or U visa applicants/holders); VAWA self-petitioners; special immigrant juveniles; certain people paroled into the U.S.; and certain other immigrants.<sup>[3]</sup> And LPRs are not subject to a public charge test when they apply for U.S. citizenship.

- **For people who *are* subject to public charge, positive factors can be weighed against negative factors in this future-looking test.** Noncitizens seeking to enter the U.S. or obtain lawful permanent residence must show that, based on the “totality of the circumstances,” they are not likely to rely on the government for subsistence *in the future*. This test considers many factors, including income, resources, age, family situation, and health. Individuals with health conditions, low incomes, or who are very young or old, for example, can present other positive factors to demonstrate that they are not likely to rely on the government for cash assistance or long-term care in the future. This could include other sources of support, education, skills, a job offer, or family members with a steady income. In fact, the receipt of public benefits could help stabilize a family. A parent’s enrollment in Medicaid while she starts her own business may allow her to maintain her ability to work, which could make her *less* likely to rely on the government in the future. Applicants can present evidence of all factors demonstrating that they are not likely to become a public charge *in the future*.

- **People can assess their individual situation in determining whether to enroll in public benefit programs.** People who are concerned about any risks of enrolling in public benefit programs can consider their own situation — including their immediate needs, whether they or their family members will be subject to the public charge determination, and whether they or a family member has any pathway to lawful permanent residence in the near or foreseeable future. For those who are not sure about their prospects for obtaining or adjusting to lawful immigration status in the future, it is a good idea to have available information about how to access free or low-cost immigration help, such as the online National Immigration Legal Services Directory, [www.immigrationadvocates.org/nonprofit/legaldirectory/](http://www.immigrationadvocates.org/nonprofit/legaldirectory/).

- **There may be no advantage to disenrolling from a program at this time.** It is too early to tell how the State Department’s public charge instructions will affect non-U.S. citizens seeking to enter the U.S. The rules governing public charge determinations *in the U.S.* have not yet changed. The notice of proposed rulemaking has not been published in the Federal Register. Once it is published, there will be an opportunity for public comments, which the agency must respond to before finalizing any new regulations. The application for adjustment to lawful permanent residence in the U.S. already asks about any public benefits applicants have received. Thus, there may be little or no advantage to disenrolling from program that the person really needs. And it’s possible that any changes to the rules will apply only to benefits received *after* the rule is final. Even if the rules change, applicants will still be able to show why they are not likely to become a public charge *in the future*.

- **Immigrants should not misrepresent information when completing public benefit applications or dealing with any government agency.** Trump’s executive order on immigration enforcement,<sup>[4]</sup> which targets virtually all undocumented immigrants for removal from the U.S., warns that “abuse” related to receipt of public benefits may make a person a priority for enforcement. The U.S. Department of Homeland Security (DHS) has defined this as “hav[ing] knowingly defrauded the government or a public benefit system.”<sup>[5]</sup> We always have advised immigrants to avoid any misrepresentations when applying for or using public benefit programs, since this causes problems with benefit agencies and Immigration.<sup>[6]</sup>

- **Federal and state laws that protect the privacy of people who apply for or receive health coverage, nutrition, economic support, or other public benefits remain in place.** In general, Medicaid, health insurance obtained under the Affordable Care Act (ACA, or Obamacare), the Supplemental Nutrition Assistance Program (SNAP, formerly food stamps), and other public programs may collect only the information necessary to determine eligibility for those programs. Applications for public benefits should not request information about the immigration status of nonapplicants in the household. And, with limited exceptions, benefit agencies may share information with other government agencies only for purposes of administering their programs.

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## WHAT DO WE KNOW ABOUT CHANGES TO PUBLIC CHARGE POLICY SO FAR?

***Changes to the public charge instructions in the U.S. State Department’s Foreign Affairs Manual (FAM).*** In early January 2018, the State Department revised the instructions in the manual that officials in U.S. embassies and consulates use to decide whether to grant non-U.S. citizens permission to enter the U.S. These changes apply only to individuals who seek to enter the U.S. as a nonimmigrant or as a lawful permanent resident, or who must go abroad in order to have their application for LPR status processed.

The revised State Department instructions address changes to how the public charge determination is to be made, including treatment of a sponsor’s affidavit of support. In the past, a valid affidavit of support

generally has been sufficient to overcome any negative factors. Under the new instructions, the affidavit of support is a positive factor — but is not enough on its own. State Department officials must also weigh the other factors in determining whether a person is likely to rely on the government in the future for cash assistance or long-term care. The revised instructions allow noncash public benefits to be considered as one of many factors in the “totality of the circumstances” test. State Department officials may also consider a family member’s or a sponsor’s use of benefits as part of the public charge determination.

It is too early to know how the new rules will be implemented by each U.S. embassy or consular office abroad. Please contact us at [publiccharge@nilc.org](mailto:publiccharge@nilc.org) if you hear of any changes in practice. A more detailed summary of the changes to the FAM is available [here](#).\*

***The Trump administration’s plan to file a Notice of Proposed Rulemaking (NPRM).*** The December 2017 Unified Agenda indicates that the administration plans to release an NPRM implementing changes to the public charge guidance. We recently learned that U.S. Citizenship and Immigration Services is under pressure from the White House to draft an NPRM by early 2018. The proposed rule is likely to alter the public charge policy by allowing government officials to consider a much broader array of critical services and work supports in the public charge determination. This could include health and nutrition programs such as Medicaid, the Children’s Health Insurance Program, and the Supplemental Nutrition Assistance Program (SNAP, or food stamps). [Reuters](#) reported on a leaked draft of the proposed rule, and the [draft](#) was published by [Vox](#) on February 8, 2018. More information about the upcoming proposed rule is available in this [fact sheet](#).

***The leaked draft of an unsigned executive order.*** The [leaked draft executive order](#) titled “Executive Order on Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility,” reported by [Vox](#) on January 25, 2017, has *not* been finalized or signed. Instead, it appears that some of the policies described in the leaked order are being implemented administratively, in the form of revised instructions or forms, or proposed regulations.

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## Help us document the impact, educate the public, and fight back against harmful changes

- **Document the impact!** NILC wants to know about people who may be avoiding needed services because of fears related to public charge or immigration enforcement. It will be helpful to document the impact of this fear on individuals, families, communities, clinics, food banks or other businesses, public health, and the local economy. Please share these stories via email at [publiccharge@nilc.org](mailto:publiccharge@nilc.org).

- **Educate the public about the value of ensuring that everyone has access to preventive care and other essential services!** Public benefits such as Medicaid, the Children’s Health Insurance Program (CHIP), and SNAP serve the public good and the community’s interest in improving general health and nutrition,

promoting education, and assisting working families in becoming self-sufficient. When all residents have access to health care and other essential services, the entire community benefits.

- **Share facts about the importance of family-based immigration!** Family-based immigration is essential to the social and economic fabric of the nation. Ensuring that families, including citizens and immigrants, can remain together strengthens families as well as communities. Families provide the support that helps newcomers find work and start businesses, complete their education, provide care for children or aging family members, and ensure that the household can participate fully in the local economy.

- **Fight back!** If a proposed rule is published, individuals and organizations can submit public comments and share stories about how the proposed rules would affect them and the communities or consumers that they serve. [Subscribe here](#) for updates from the Protecting Immigrant Families Campaign,<sup>[7]</sup> and stay tuned for more information.

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**This document provides the information NILC has as of its publication date.** Updated information will be available from our website, [www.nilc.org](http://www.nilc.org), as it becomes available.

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## NOTES

[1] *Public Charge Fact Sheet* (U.S. Citizenship and Immigration Services, released Apr. 29, 2011), <https://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet>.

[2] For the full list, see *Federal Guidance on Public Charge: When Is It Safe to Use Public Benefits?* (NILC, Aug. 2014), [www.nilc.org/wp-content/uploads/2015/12/public-charge-nat-2014-08-08.pdf](http://www.nilc.org/wp-content/uploads/2015/12/public-charge-nat-2014-08-08.pdf), p. 5.

[3] *Id.*, p. 4.

[4] *Executive Order: Enhancing Public Safety in the Interior of the United States* (White House, Jan. 25, 2017), [www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united](http://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united).

[5] Answer to question 18, “What threshold of abuse of a public benefit program will render someone removable?,” in *Q&A: DHS Implementation of the Executive Order on Enhancing Public Safety in the Interior of the United States* (U.S. Dept. of Homeland Security, Feb. 21, 2017), [www.dhs.gov/news/2017/02/21/qa-dhs-implementation-executive-order-enhancing-public-safety-interior-united-states](http://www.dhs.gov/news/2017/02/21/qa-dhs-implementation-executive-order-enhancing-public-safety-interior-united-states) (emphasis added).

[6] For more information, see “Unpacking the References to Public Benefits and the Privacy Act in Trump’s Executive Order on Interior Enforcement,” *The Torch*, Mar. 2, 2017, [www.nilc.org/news/the-torch/3-2-17](http://www.nilc.org/news/the-torch/3-2-17).

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