

Central Valley Perinatal Symposium: WIC and Immigration

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**CALIFORNIA RURAL LEGAL
ASSISTANCE FOUNDATION**

Advocates for Justice

Common Questions & Fears During Changing Immigration Policy

- Will using WIC affect my pending immigration case?
- Will participating in WIC affect my candidacy for an immigration benefit in the future?
- Will I still be able to get a green card if I used health care services in the past?
- My child receives public benefits. Will this affect me?
- Should I terminate some or all of the benefits my household receives?
- I heard on TV that undocumented individuals who receive health services may have their green card applications denied. Is this true?

Disclaimers

- Things are changing ***fast.***
- There are a lot of unknowns.
- We are sharing the information we have at this time.
- We are providing general information and not legal advice.
 - Consult with an attorney who can advise your organization.
- ***For case specific inquiries, refer clients to trusted legal service providers***
 - i.e. an experienced immigration attorney or DOJ OLAP Accredited Representative.

Public Charge

- A [Public Charge](#) is a person dependent on the government for financial and material support
- The likelihood that a person will become a public charge is assessed:
 - when they **apply to enter the US**
 - when they **apply to become a lawful permanent resident (LPR)**
 - **there is no public charge test when a LPR applies for citizenship**
- If the immigrant is “likely to become a public charge,” the immigrant can be denied LPR status (a green card) or entry.

Many Immigrants are Exempt from Public Charge

- Exempt immigrants include (but not limited to):
 - **Most Lawful Permanent Residents**
 - **Refugees and asylees** (applicants and holders);
 - **survivors of trafficking and other serious crimes** (such as T-Visa and U-Visa recipients—applicants and holders);
 - **self-petitioners under VAWA** (the Violence Against Women Act);
 - **special immigrant juveniles**
 - **U.S. Citizens**

How does the gov't decide if someone is likely to be a public charge?

There are two tests related to public charge:

(1) The Totality of the Circumstances Test

(2) Affidavit of Support (for family petitions and some employment-based petitions).

Public Charge's "Totality of the Circumstances" Test

- USCIS defines "public charge" as an individual who is likely to become "primarily dependent on the government for subsistence, as demonstrated by either
 - the receipt of public cash assistance for income maintenance, OR
 - institutionalization for long-term care at government expense."
- Whether a person (the applicant for the green card/admission) is likely to become a public charge is based on **all of the facts** relevant to their ability to support themselves, which means that immigration agents must consider the "totality of the circumstances" when adjudicating an applicant's case.
- Immigration agents are **required** by law to, *at a minimum*, consider the applicant's:
 - Age,
 - health,
 - family status,
 - assets, resources, financial status, AND
 - Education and skills
- In addition, other relevant factors may be considered, such as
 - any affidavit of support

The Test (continued...)

- Under current policy, only two types of public benefits used by the applicant may be considered:
 - **1. Cash assistance for income maintenance**
 - Supplemental Security Income (SSI)
 - Temporary Assistance for Needy Families (TANF)(aka CalWORKs)
 - State and local cash assistance programs (often called “General Assistance”)
 - **2. Institutionalization for long-term care at government’s expense**
 - In a nursing home or mental health institution

Affidavit of Support

The second test is an affidavit of support. This requirement applies only to persons immigrating through a family visa petition and in some cases, employment-based petitions.

- Generally, under this test, most people immigrating through a family visa petition must have an affidavit of support submitted on their behalf, or *they will be found inadmissible as a public charge*.
- The affidavit of support requires the person to have a certain level of income or assets (for income, 125% of the Federal Poverty Income Guidelines), and
 - it is a legally enforceable contract to provide financial support to the applicant.

On family-based immigrant petitions,
Consulates Abroad may evaluate the
relevant factors and the Affidavit of Support
differently.

Adjustment of Status:
applying for and obtaining a green card within the U.S.

Applicant's past or current use of:

- cash aid or
- Long term institutionalized care at government's expense

Relevant Factors:

- Age,
- health,
- family status,
- assets, resources, financial status, AND
- Education and skills

AND

Affidavit of Support filled on behalf of the applicant (including affidavits of supports filed by joint sponsors)

Consular Processing: obtaining your green card at a U.S. consulate *abroad*

Changes to the Foreign Affairs Manual (FAM) may make certain applicants more vulnerable to refusal on public charge grounds.

Applicant's past or current use of:

- cash aid or
- Long term institutionalized care at government's expense

Relevant Factors:

(Age, health, family status, assets, resources, financial status, AND Education and skills.)
AND

Affidavit of Support:

- Affidavit of support, alone, is no longer sufficient; it is one "positive factor" to be taken into account as part of the totality of the circumstances

Financial Resources: As part of the **totality of circumstances test**, past or current receipt of:

- public assistance of any type by the Applicant or Applicant's household members
- means-tested benefits by Sponsor or Sponsor's household members, if it affects the applicant's resources and financial status, including the sponsor's ability to support the applicant.

Final Public Charge Rule: Forward Looking

PREVIOUS DEFINITION

An immigrant “likely to become primarily dependent on the government for subsistence”

FINAL DEFINITION

A person who “is more likely than not to receive one or more public benefits for more than 12 months in the aggregate in any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months).”

Public Charge Final Rule: some highlights

- Final rule published on August 14, 2019
 - **Effective date is October 15, 2019**
- New definition of public charge
 - But maintains the totality of the circumstances test
- Considers more types of public benefits
- Establishes new standards and heavily weighted factors
- **Evaluates applicant's financial status by considering whether applicant's household income is above 125% of FPG**
- Minimizes role of Affidavit of Support

Benefits Included in Public Charge FINAL Rule

- Cash Support for Income Maintenance*
 - SSI, TANF, State General relief, or general assistance
- Long Term Institutional Care at Government Expense*
- Non-Emergency Medicaid**
- Supplemental Nutrition Assistance Program (SNAP or Food Stamps)
- Housing Assistance (Public Housing, Section 8 Housing Vouchers and Rental Assistance)

** Included under current policy as well*

*** Exceptions for emergency medical conditions, & coverage for pregnant women and children UNDER 21*

Medicaid Receipt Exceptions in Final Rule

- Emergency medical condition
- Services provided under the Individuals with Disabilities Education Act
- School-based services or benefits
- Benefits for those under 21 years of age
- Benefits for women during pregnancy (and during 60-day period after pregnancy)

Benefits Excluded from Public Charge

ANY benefits not on the included list will not be applied toward the public charge test. Examples include:

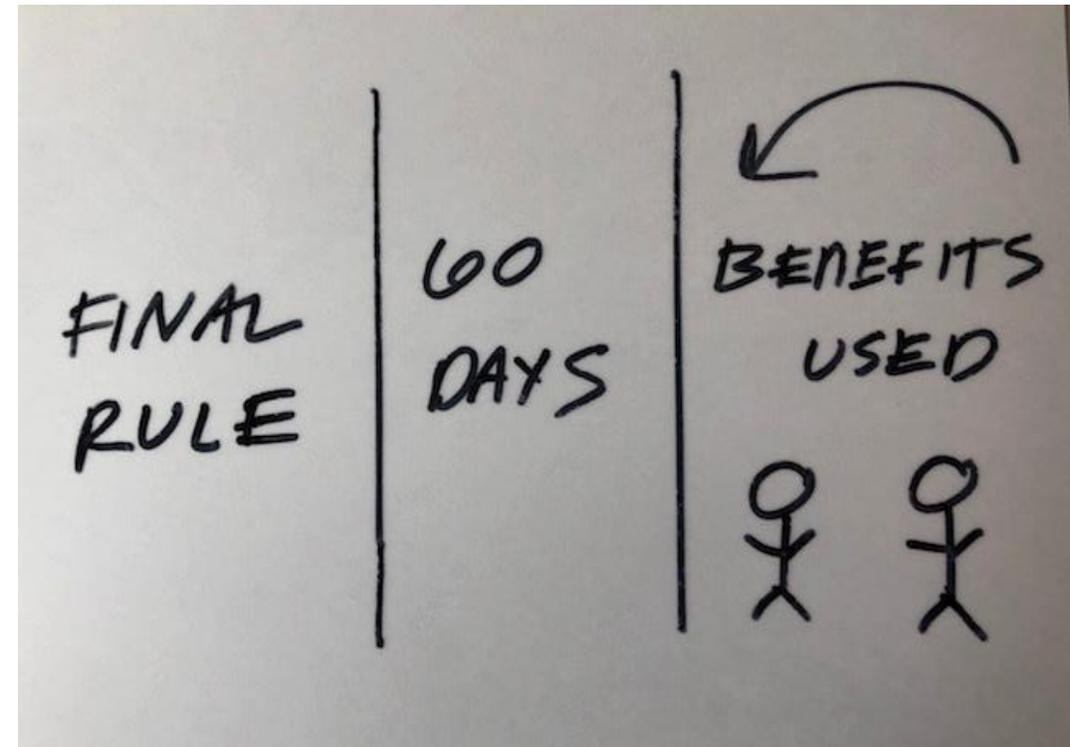
- Disaster relief
- Emergency medical assistance
- Entirely state, local or tribal programs (other than cash assistance)
- Benefits received by immigrant's family members
- CHIP
- Special Supplemental Nutrition for Women Infants and Children (WIC)
- School Breakfast and Lunch
- Energy Assistance (LIHEAP)
- Transportation vouchers or non cash transportation services
- Non-cash TANF benefits
- Tax credits, including the Earned Income Tax Credit and Child Tax Credit
- Advance premium tax credits under the Affordable Care Act
- Pell grants and student Loans

TOTC Test under FINAL Rule

- **Income and Financial Status**
 - Under 125% FPL (negative); Over 250% FPL (heavy positive)
- **Age**
 - Under 18 or over 61 (negative)
- **Education and Skills**
- **Health**
 - Medical condition likely to require extensive treatment, institutionalization or interfere with ability to care for self, attend school or work
- **Family Status**
- **Affidavit of Support**
 - No longer primary factor in determining public charge inadmissibility

Not Retroactive

Benefits other than cash and long-term care will not be considered until **October 15, 2019** (60 days after the rule's finalization).



Takeaways & Messaging to Consumers

- **Let's fight fear with facts** - the public charge rule was designed to be confusing, complicated, and scary.
- **There may be no advantage in dis-enrolling now** from benefits for which you are eligible without knowing whether you are or may be subject to the public charge test!
- **Applies only to applications submitted on or after October 15, 2019.**
 - Newly named benefits used prior to that date 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.
 - Whether public charge affects/applies to you is a **case-specific inquiry**

Each household should get an immigration consultation so they can asses their immigration benefits candidacy—if any. Links to locating service providers:

- CA Department of Social Services Immigration Services Contractor <http://www.cdss.ca.gov/Benefits-Services/More-Services/Immigration-Services/Immigration-Services-Contractors>
- Immigrationlawhelp.org

Public charge looks at the balance of negative and positive factors. No single factor makes someone a public charge. **Positive factors can be weighed against negative factors** in this forward-looking test.

Public charge is assessed when a person applies to become a permanent resident (get a green card) or for entry to the US. People decide when they apply, and can make sure they have established a good balance of factors.

Messaging for Consumers

Families need to make individual determinations based on their situation. People should get the help they need for their families to thrive.

Using health care and nutrition benefits can help you be stronger, healthier and less likely to be dependent on the government.

If you have questions about your eligibility/candidacy for an immigration benefit, consult an experienced immigration attorney or OLAP accredited representative.

If you have questions about your eligibility for a public benefit, consult a trusted enrollment provider.

Q and A and Discussion

Contact us:

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