

Reshaping the Narrative on Public Charge to Reach Immigrant Populations that Need Affordable Health Insurance

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Introduction

Over the last year, the Biden Administration has made improving access to coverage and care a core policy priority across all of the healthcare programs it administers [Medicaid/ the Children's Health Insurance Program (CHIP), Medicare, and Marketplace], with a particular focus on low-income populations. Despite the administration's proactive steps to fund outreach, promote affordable health coverage, and simplify enrollment processes for federally funded health coverage, a key barrier remains: many immigrants and their families are concerned that enrolling in Medicaid/CHIP, Marketplace, and other public health insurance programs will run afoul of public charge rules and jeopardize their immigration status.

These fears remain despite the fact that the administration has reinstated longstanding public charge guidance that does not consider the use of Medicaid/CHIP benefits (other than government-funded institutionalization for long-term care) or Marketplace coverage in a public charge determination. On February 18, 2022 the Department of Homeland Security (DHS) released a new proposed rule to codify this approach in regulations.

State Medicaid/CHIP agencies, Marketplaces, and community-based organizations (CBOs) working to help enroll individuals in health insurance have important roles in helping immigrants access coverage for which they are eligible, including by informing them that enrolling in health coverage will not hurt their chances of obtaining a green card or becoming a citizen.

This issue brief, the third in a series, *Supporting Health Equity and Affordable Health Coverage for Immigrant Populations*, provides an overview of the status of the public charge rule and presents strategies to help connect eligible individuals to affordable coverage.

What is a Public Charge?

Public charge is a longstanding concept in immigration law that refers to individuals who are likely to be dependent on the government for support. Under the Immigration and Nationality Act, the DHS Citizenship and Immigration Services (USCIS) may deny an immigrant admission to the country or a green card if the agency determines that the individual is, or is likely to become, a public charge. (Public charge determinations do not apply to green card holders seeking to renew a green card or to become a U.S. citizen.)

Between 1999 and 2019, federal guidance defined "public charge" as someone who is likely to be "primarily dependent" on two sets of public benefits: cash assistance for income maintenance or long-term institutionalization at government expense.ⁱ On August 14, 2019, DHS published a final rule that made significant changes to the standards for determining whether an immigrant is likely to become a "public charge," including by expanding the scope of benefits included in a public charge determination to encompass Medicaid as well as other benefits like the Supplemental Nutrition Assistance Program (SNAP) and various housing benefits.ⁱⁱ Because of the breadth of the 2019 rule, *which is no longer in effect*, many immigrant families chose not to use an array of public benefits, even in cases where the benefits or the families themselves were not directly implicated by the rules. This reaction is known as the "chilling effect." In an effort to reduce the chilling effect, the Biden administration recently proposed new public charge rules to restore the longstanding interpretation of public charge.

ⁱ Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Federal Register 101 (26 May 1999), pp. 28689-28693. Available at: <https://www.govinfo.gov/content/pkg/FR-1999-05-26/pdf/99-13202.pdf> ("Field Guidance").

ⁱⁱ Inadmissibility on Public Charge Grounds, 84 Federal Register 157 (14 August 2019), pp. 41292-41508. Available at: <https://www.govinfo.gov/content/pkg/FR-2019-08-14/pdf/2019-17142.pdf>; "Inadmissibility on Public Charge Grounds; Correction," 84 Federal Register 191 (2 October 2019), pp. 52357-52363. Available at: <https://www.govinfo.gov/content/pkg/FR-2019-10-02/pdf/2019-21561.pdf>. For more information about the 2019 public charge rule, see Public Charge Final Rule: Frequently Asked Questions, State Health & Values Strategies, February 26, 2020. Available at: https://www.shvs.org/wp-content/uploads/2020/02/SHVS_Public-Charge-FAQ_Updated-02.26.2020.pdf

How Can State Medicaid/CHIP Agencies, Marketplaces, and Others Help With Outreach to Immigrants About Their Public Charge Concerns?

Since taking office, the Biden Administration has sought to clearly communicate with states, stakeholders, and people that enrolling in healthcare coverage is safe. State Medicaid/CHIP agencies, Marketplaces, and community groups working to help facilitate enrollment can amplify federal messaging and develop strategies to help address immigrants' concerns about using coverage and connect immigrants to coverage they are eligible to receive. As a starting point, state agencies, Marketplaces, and other outreach, education, and enrollment facilitator organizations can create and deploy plans to reach eligible immigrant communities about the change in public charge, with the key message that enrollment in Medicaid/CHIP and Marketplace coverage is not implicated in public charge determinations.

Suggested strategies include:

- Developing health coverage application materials in multiple languages that clearly indicate that Medicaid/CHIP and Marketplace coverage is not implicated in public charge determinations.
- Creating informational flyers in multiple languages, which can be distributed at locations frequented by immigrants, such as community centers, churches, and/or health centers.
- Posting social media updates that contain some of the messages below and that direct individuals to state helplines and/or counselors that can help them enroll.
- Leveraging established campaigns (e.g., open enrollment initiatives) to amplify education about changes in public charge rules.
- Providing training for outreach coordinators on public charge and helping them incorporate public charge messaging into their interactions with enrollees.
- Engaging CBOs and other trusted messengers to assist with education and outreach.

The following checklist can help states and their outreach partners ensure that these strategies will be as impactful as possible:

- ✓ Is the information presented in simple and straightforward language?
- ✓ Are materials and messages available in multiple languages?
- ✓ Is information consistent and shared across multiple state agencies?
- ✓ Is “public charge” defined clearly and accurately?
- ✓ Do materials and messages link back to federal resources (e.g., USCIS)?
- ✓ Is the content regularly updated to reflect ongoing developments and new resources?

What are Some Key Messages That States and Their Partners Can Use in These Materials?

There are some key messages that will be important for states and their outreach partners to disseminate through these strategies:

- Everyone who is eligible should have the ability to access healthcare, and the best way to do this is to enroll and obtain health insurance for you and your family.
- The 2019 public charge rules are no longer in effect. The federal government ended that policy. Contrary to what you might have heard or read, many immigrants qualify for financial help to purchase a private plan through the [YOUR STATE MARKETPLACE NAME] or free or low-cost coverage through Medicaid and/or CHIP.
- You don't have to be a U.S. citizen to qualify for health insurance. Those in your family, including yourself, who are in the United States legally, and are also residents of [YOUR STATE NAME] might be eligible.
- All information you provide during your application is kept confidential and not shared with other government agencies.

How Did the Public Charge “Chilling Effect” Impact Coverage?

Various researchers have studied the “chilling effect” that the 2019 public charge rule had on the use of public benefits by immigrants. According to the Urban Institute, in 2020, almost one in seven adults in immigrant families (13.6%) reported that they or a family member avoided a noncash government benefit program, such as Medicaid, CHIP, SNAP, or housing assistance because of concerns about future green card applications. Researchers noted that this “chilling effect” was most significant in families more likely to be directly affected by the rule: those in which one or more members do not have a green card (27.7%).¹ In a survey of CBOs that serve immigrant populations, an overwhelming number of respondents reported that public charge, as well as other anti-immigrant policies, deterred immigrants from seeking Medicaid and other programs that were included in the 2019 rule. The survey also showed that these policies deterred immigrants from seeking COVID-19 testing and treatment, and emergency Medicaid services, which would not have counted under the public charge rule.²

What Is the Status of the Public Charge Rule Today?

The 2019 public charge rule was invalidated by courts last year and then fully rescinded by DHS. DHS subsequently [reinstated](#) longstanding [guidance](#) that was first issued in 1999 and that sets out a clear expectation that only a very narrow set of benefits (cash assistance and long-term care) will be weighed in a public charge determination. Medicaid benefits (other than institutionalization for long-term care at government expense³), CHIP, and Marketplace subsidies are not considered in public charge determinations. Using public assistance for immunization or testing for COVID-19, emergency services, or other [state-funded health coverage programs](#) also is not considered. In a new proposed rule released in February 2022, DHS proposes to codify these standards in regulations, with some additional clarifications aimed at reassuring immigrants that applying for benefits on behalf of family members will not be counted against the individual applying. The proposed rule also seeks to improve transparency by requiring denial determinations to be supported in writing.

What Federal Resources Explain the Current Public Charge Policy?

To amplify the policy reversal on public charge and to explain the health coverage implications, the Centers for Medicare & Medicaid Services (CMS) issued an [informational bulletin](#) to remind state Medicaid/CHIP agencies about the current policy. In recognition of the ongoing fear and confusion about the status of public charge, in November 2021, the USCIS at DHS also issued a [letter to interagency partners](#) reiterating the agency’s current approach to public charge (including restating the benefits that are not considered in public charge determinations). DHS has a [resource page](#) with frequently asked questions (FAQs) about the policy and is developing promotional activities, including a social media campaign and local community engagements, to address the confusion and fear among immigrants that remain regarding public charge.

What Barriers to Health Coverage Still Remain?

Focus group research funded by the Robert Wood Johnson Foundation establishes that almost all immigrants surveyed want health insurance, and coverage is perceived positively, saying that health insurance would offer them peace of mind and is another way to provide for their families.⁴ However, despite this overwhelming desire and need, many immigrants still believe the public charge rules are in effect and that using benefits could negatively impact their immigration status. Some immigrant families continue to avoid public benefits out of concern that the rules could change again or hinder them from getting a green card or citizenship.

In addition, immigrants who have never had health insurance find it difficult to enroll, potentially because of language barriers, inexperience with enrolling, or long, complex applications. One source of complexity and confusion may be application questions that ask about family members in the household, which can raise concerns for those family members who are not eligible for benefits.

Are There Examples of States Doing Outreach and Education About Public Charge Changes?

States across the country have taken initial steps to help update consumers about public charge changes. States including [Colorado](#), [Kentucky](#), and [Washington](#) proactively disseminated clear information on their websites or through social media channels to alert consumers about the change in federal public charge policies and reassure them that public benefits are safe. [Oregon](#) and the [District of Columbia](#) both include straightforward public charge FAQs in multiple languages on their websites. [California](#) also collaborated with immigrant-serving organizations to develop and post an updated “public charge guide,” which reassures applicants that using most benefits and services will not harm their immigration status. An [Illinois](#) website focused on coverage for immigrant seniors includes a link directing consumers who have questions about how using benefits could impact their immigration status to nonprofit organizations that can help, a strategy that may help connect consumers with trusted sources to reiterate the state’s messaging.

In New Mexico, [BeWellnm](#), the state’s official health insurance marketplace, hosts in-person events throughout the year with its partners, such as a local chamber of commerce, consulates, and community organizations that serve immigrant communities. The idea behind such events is to partner with a trusted advisor so that BeWellnm can correct any misinformation about public charge and also use the opportunity to enroll more individuals in health insurance.

Sharing resources like these on easy-to-find webpages and regularly reiterating messaging through social media can help get—and keep—the word out that using Medicaid, CHIP, and Marketplace benefits is safe.⁵

Are There Other Strategies That State Medicaid/CHIP Agencies Can Pursue to Mitigate the “Chilling Effect”?

Because mixed-status families (families that include both citizen and non-citizen household members) may have particularly acute fears about signing up for benefits, states can also take steps to design non-applicant options such as allowing an applicant, such as a parent, to apply on behalf of a citizen dependent. Refraining from asking non-applicants to disclose their immigration status or to provide their Social Security number as part of an application is another way to allay concerns about accessing benefits.

What’s the Bottom Line?

The Biden administration’s reorientation on public charge policy is an opportunity to enroll more individuals and provide much-needed health insurance to eligible immigrants. Especially given that Medicaid and CHIP enrollment happens year-round, states can take steps now to encourage eligible immigrants to enroll in Medicaid and CHIP.

ENDNOTES

1. Hamutal Bernstein, Michael Karpman, Dulce Gonzale, and Stephen Zuckerman, Urban Institute, "Immigrant Families Continued Avoiding the Safety Net during the COVID-19 Crisis" February 2021. Available at: <https://www.urban.org/sites/default/files/publication/103565/immigrant-families-continued-avoiding-the-safety-net-during-the-covid-19-crisis.pdf>.
2. Hamutal Bernstein, Jorge Gonzale, Dulce Gonazalez, Jahnvi Jagannath, Urban Institute, "Immigrant-Serving Organizations' Perspectives on the COVID-19 Crisis" August 2020. Available at: <https://www.urban.org/research/publication/immigrant-serving-organizations-perspectives-covid-19-crisis>.
3. Under the 1999 Field Guidance, only Medicaid benefits for individuals who are institutionalized for long-term care (such as nursing facility residents or residents of mental health institutions) are considered in a public charge determination; institutionalization for short periods of rehabilitation are not considered in public charge determinations.
4. Communicating about the Public Charge Rule Change, PerryUndem and Betty&Smith, July 2021
5. For other strategies that states, localities, and service providers can undertake to support immigrant access to benefits, see the Protecting Immigrant Families Toolkit for State and Local Government Officials, September 2021. Available at: <https://protectingimmigrantfamilies.org/wp-content/uploads/2021/10/Public-Officials-Toolkit-1.pdf>.

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