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The Department of Homeland Security (DHS) final rule, *Inadmissibility on Public Charge Grounds*, was published in the Federal Register on August 14.^{1*} After considering more than 266,000 comments received on its proposed rule, DHS finalized significant changes to the standards it will use to determine whether an immigrant is likely to become a “public charge”—a person dependent on the government for support—which will have consequences for certain immigrants’ legal status. To date, multiple federal courts have issued nationwide preliminary injunctions temporarily blocking the Administration’s implementation of the rule, which was originally scheduled to take effect on October 15.

The Robert Wood Johnson Foundation’s State Health and Value Strategies program hosted a webinar about the final rule, focusing in particular on how it could impact immigrants’ use of Medicaid and other health benefits. This document provides answers to frequently asked questions—including a number of questions raised during the webinar—about whom the rule will impact, what benefits are implicated by the rule, and how the rule might be administered. The below Q&As condense questions into key categories of interest and are updated as of October 25, 2019.

GENERAL QUESTIONS

1. What is “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 (INA), DHS may deny an immigrant admission to the country or a green card if the agency determines that he or she 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.[†]

Since 1999, federal guidance has defined “public charge” as someone who is likely to be “primarily dependent” on two sets of public benefits: public cash assistance for income maintenance or long-term institutionalization at government expense.² The final rule significantly broadens this standard, as described in detail below.

2. Who are the individuals subject to a public charge determination?

Individuals subject to a public charge determination are those applying to:

- › Enter the United States (e.g., an individual outside the country applying for a visa)
- › Adjust status to become a Lawful Permanent Resident (LPR) (e.g., a visa holder in the United States seeking a green card)
- › Receive an extension of stay in the United States (e.g., a visa holder seeking to extend his/her visa to remain in the U.S.)
- › Receive a change of status in the United States (e.g., a visa holder seeking to change from one visa type to another visa type)

* On October 2, 2019, DHS published corrections to the final rule. The corrections primarily clarify statements or correct typographical errors but do contain a notable substantive change to exempt from a public charge determination the public benefits received by immigrant spouses and children of U.S. citizens and U.S. nationals serving in the U.S. Armed Forces.

[†] In rare cases, the Department of Justice (DOJ) will consider whether a person qualifies as a public charge in certain deportation decisions. This process uses different standards and applies to different groups of immigrants.

The rule newly subjects the last two groups to public charge determinations, though these determinations will be more limited; DHS will consider past or current receipt of public benefits (but not future use) by evaluating whether applicants received benefits for more than 12 months within three years of obtaining the status they wish to extend or change.³ As is described in more detail below, public charge determinations for individuals seeking to enter the United States or to obtain a green card will consider past, current, or potential future use of public benefits in making a public charge determination.

Tables 2 to 7 in the rule’s preamble describe the immigrant categories subject to public charge.⁴

3. How does the final rule view public benefits use?

The rule defines a public charge as a person who receives or is likely to receive one or more public benefits (as expanded in the rule) for more than 12 consecutive or non-consecutive months within any three-year period.⁵ Receiving two benefits in one month will count as two months of benefit use.⁶ Enrollment will count as receipt regardless of whether a person obtains services through a program.⁷ The rule also expands the scope of benefits considered (discussed further in Question 4).

While the new regulatory definition of “public charge” makes specific reference to benefits, the INA has long required DHS to consider the “totality of circumstances” when assessing a person’s likelihood of becoming a public charge at any time in the future by taking into account a person’s age; health; family status; education and skills; and assets, resources, and financial status. The final rule continues this practice but expands the DHS analysis to consider new standards and evidence in the process. As part of these changes, for most categories of immigrants subject to a public charge determination, DHS will consider an immigrant’s past experience with benefits—including applications for benefits or approval to receive services—to determine if someone is “more likely than not” to become a public charge at any time in the future.⁸

Use of any of the newly enumerated benefits will be considered in a public charge determination, but the rule now specifies that DHS will consider, as a heavily weighted negative factor, whether the individual received or has been certified or approved to receive one or more public benefits for more than 12 months in the aggregate within any 36-month period beginning no earlier than 36 months prior to an application for admission or adjustment of status to an LPR.

4. What are the new benefits considered in public charge determinations under the final rule?

Under the final rule, DHS will consider the following expanded scope of benefits:

- › Cash assistance [Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), or state/local general assistance programs][‡]
- › Medicaid, including institutional long-term care (exempt benefits discussed below)⁹
- › Supplemental Nutrition Assistance Program (SNAP)
- › Housing assistance under the Housing Choice Voucher Program
- › Section 8 Project-Based Rental Assistance
- › Subsidized housing under the Housing Act of 1937

[‡] These benefits have been considered as part of public charge determinations under Field Guidance that has been in effect since 1999.

The final rule exempts several Medicaid benefits from public charge determinations:

- › Medicaid benefits received for an emergency medical condition
- › School-based Medicaid services
- › Medicaid benefits provided under the Individuals with Disabilities Education Act (IDEA)
- › Medicaid benefits received by individuals under age 21
- › Medicaid benefits received by pregnant women up to 60 days postpartum

The final rule also exempts *any* public benefits received by the individuals listed below:

- › Certain children of U.S. citizens whose citizenship status is pending¹⁰
- › Immigrants enlisted in the U.S. Armed Forces who are serving in active duty or in the Ready Reserve¹¹
- › The spouse or child of a person who was enlisted in, or serving in active duty or the Ready Reserve of, the U.S. Armed Forces either (1) at the time the spouse or child received the benefit or (2) at the time of filing or adjudication of the visa or green card application.¹²

5. What other factors are considered in a public charge determination?

For decades, public charge determinations considered how likely someone is to become a public charge *in the future* based on the totality of an immigrant's circumstances. Under the rule, and consistent with the INA and longstanding federal guidance, DHS will continue applying this analysis by taking into account a person's age; health; family status; education and skills; and assets, resources, and financial status.¹³ However, the rule sets forth new standards and evidence for these factors and other relevant considerations (such as affidavits of support) that DHS will use to determine whether a person is more likely than not to become a public charge. The rule also outlines factors that should be weighed heavily for or against an immigrant's case.

Many of these new standards and evidence represent a major departure from prior policy and could contribute even more significantly than the rule's benefits-related changes to whom DHS determines to be a public charge going forward. For example, the final rule considers as negative evidence things like earning under 125 percent of poverty (approximately \$31,375 for a family of four), being a child or senior, having a health condition that affects the ability to work, go to school, or care for oneself (without access to private insurance), a lack of credit history or poor credit score, a large family, limited English proficiency, etc. The rule considers as a heavily weighted positive factor having income more than 250 percent of poverty.

Overall, the rule sets up a complicated analysis that gives DHS officers a great deal of latitude to apply these various standards and evidence to reach a public charge decision.

6. When will the DHS rule go into effect?

The rule's implementation date is not clear. The rule was originally scheduled to take effect on October 15; however, multiple federal judges have now issued preliminary injunctions that have enjoined DHS from moving forward. New York, Maryland, and Washington's orders apply nationwide. As a result, DHS will be unable to implement the public charge policy while litigation proceeds. The rulings also postponed the regulation's effective date, ensuring that DHS will not be able to apply its policy retroactively should the injunctions be overturned on appeal.¹⁴ The federal government is expected to appeal the rulings.

7. How will DHS treat visa and green card applications submitted prior to the rule's effective date?

DHS will review applications and petitions pending prior to the rule's effective date using the government's prior public charge process.¹⁵ As noted above, the effective date is not yet clear.

8. How will DHS consider benefits used before the rule's effective date when making public charge determinations?

For benefits received prior to the rule's effective date, DHS will only consider benefits counted in public charge determinations under the 1999 Field Guidance: cash assistance and long-term care. Use of these benefits will be considered a negative (but not heavily weighed) factor. DHS will not consider other benefits (e.g., Medicaid or SNAP) received or certified for receipt before the rule's effective date.¹⁶

9. How will DHS collect the information needed to make public charge determinations?

For applicants to enter the country or receive a green card, once the rule goes into effect, public charge determinations will be made by DHS officers—generally at a local district office—based on self-reported information that immigrants will provide to DHS through a new “Declaration of Self-Sufficiency” form (Form I-944).¹⁷ (This form will not be requested of applicants to extend or change a visa status.) Immigrants will be responsible for gathering information to present to DHS along with the form, such as proof of private health insurance or proof that they used Medicaid only for an emergency condition. If benefits were issued in error, applicants will be responsible for explaining the error and providing documentation of their disenrollment.

States and providers may want to consider developing new administrative processes and documentation to help immigrants meet these burdens of proof (although DHS does not specifically require states/localities/providers to develop new administrative processes and documentation).

IMPACTED POPULATIONS

10. Are undocumented individuals, green card holders, and/or refugees and asylees subject to public charge?

Generally, no. By statute, public charge determinations do not apply to undocumented individuals, refugees, asylees, or, in most circumstances, green card holders. Green card holders can become subject to a public charge determination when they return from a trip abroad of six months or more, or if they meet certain other limited circumstances in which they are now considered individuals seeking to enter the United States.¹⁸

In some respects, the broadened set of benefits is most troubling because the rule allows DHS to consider, as part of a public charge determination, the likelihood that a person will receive a public benefit *at any time in the future*. This includes points in time when an individual applying for a green card may become eligible for public benefits later—even if they never used benefits in the past.

11. If an immigrant is in an excluded group (e.g., a refugee), are they totally excluded from the public charge process, or will DHS apply a public charge determination that ignores their use of benefits?

Certain immigrants are exempt from public charge determinations altogether by statute. They include refugees, asylees, and certain Cuban, Haitian, Central American, and various other categories of immigrants. These individuals are not subject to a public charge determination.

Notably, the rule clarifies that if an individual in an exempt immigration category uses benefits, DHS will not consider those benefits if that individual later becomes part of an immigration category subject to public charge.¹⁹

MEDICAID COVERAGE

12. Is Medicaid coverage considered in a public charge determination? What “counts” as participation in the program?

Yes. Under the final rule, for the first time, DHS will consider a person’s Medicaid coverage in a public charge determination.

DHS will consider whether an immigrant has applied for, received, is currently certified or approved to receive, or has been certified or approved to receive public benefits in a public charge determination. An immigrant who applies for public benefits on behalf of another individual (e.g., when an immigrant parent applies for Medicaid on behalf of his or her citizen child) will not count as an application for that immigrant.²⁰

13. Which Medicaid benefits are excluded from DHS consideration?

The rule exempts the following Medicaid services:

- › **Benefits paid for an emergency medical condition:** Recognizing that treatment for emergency medical conditions are often involuntary and must be provided by doctors and hospitals regardless of the ability to pay, DHS will not consider treatment for emergency medical conditions funded by Medicaid in a public charge determination.
- › **Medicaid benefits received by immigrants under 21 and pregnant women (including 60 days postpartum):** In response to public comments and in consideration of recent legislation permitting youth and pregnant women to access Medicaid and Children’s Health Insurance Program (CHIP) notwithstanding Personal Responsibility and Work Opportunity Reconciliation Act benefit restrictions, the final rule exempts Medicaid benefits used by these two populations. Notably, the rule does not exempt these populations from public charge altogether; pregnant women and individuals under 21 could still become subject to public charge determinations that will consider their use of non-Medicaid benefits as well as other relevant factors (e.g., income, education, or age).
- › **School-based benefits provided to children who are at or below the oldest age of children eligible for secondary education as determined under state law:** Medicaid pays for health and related services provided in schools when covered services are provided to Medicaid-enrolled students. Medicaid also reimburses states for payments to schools for outreach and enrollment activities and other school-based administrative services, such as care coordination, referrals, and transportation to and from school on a day a child receives a Medicaid-covered service.²¹
- › **Services or benefits funded by Medicaid but provided under IDEA:** IDEA requires school districts to make a free, appropriate education available to all children with disabilities and permits school districts to receive Medicaid reimbursement for the cost of providing special education and related services, such as speech or physical therapy, which support a child’s ability to learn.
- › **Medicaid services provided to foreign-born children of United States citizens:** The rule does not consider Medicaid benefits received by children of United States citizens whose lawful admission will result in citizenship (either by adoption or by virtue of permanently residing with their United States citizen parent).

14. Given the limitations on immigrants' eligibility for Medicaid, which categories of immigrants might actually be eligible for Medicaid *and* subject to a public charge determination?

In general, Medicaid eligibility is limited to qualified lawful immigrants who have been in the country for five years or more, so many people already using Medicaid will not be subject to a public charge determination because they already have green cards. However, as noted above, some green card holders who receive benefits may become subject to public charge if they leave the U.S. for more than six months and attempt to re-enter the country. Another example of an impacted group includes individuals granted parole or withholding of removal who are Medicaid eligible and become subject to public charge when seeking a green card.

15. Does the use of services provided through a state's Medicaid Section 1115 waiver count for public charge purposes?

The preamble to the final rule does not mention Section 1115 demonstrations. Some waivers expand eligibility to new Medicaid populations or alter the way that Medicaid services are delivered to existing Medicaid populations. In such cases, services provided through a waiver would appear to count for public charge purposes.

Notably, some Section 1115 waivers authorize Medicaid funding to support “uncompensated care pools” or “low-income pools,” recognizing that providers incur high costs in delivering care to low-income populations that are not eligible for Medicaid. These pools do not provide “coverage” to individuals; rather, they provide reimbursement to institutions and therefore would not seem to be implicated by the rule.

MEDICARE COVERAGE

16. How would the rule affect individuals dually eligible for Medicaid and Medicare?

The final rule does *not* include Medicare in public charge determinations. However, the rule could impact immigrants who are eligible for both Medicare and Medicaid—“dual eligibles”—in at least two ways. First, some low-income Medicare beneficiaries are eligible for Medicare Savings Programs, which help lower-income Medicare beneficiaries afford the cost of their Part A and B premiums, deductibles, and co-insurance.²² These programs are authorized by the Medicaid statute and states receive federal Medicaid matching funds for these programs. Therefore, Medicare Savings Programs appear to be encompassed as public benefits under the rule since the rule includes Medicaid with only limited exclusions. In addition, DHS will also look at a number of other factors for public charge purposes that could be relevant to the dual eligible population. For example, an individual who is dually eligible for Medicaid and Medicare may be elderly and is likely to have a low-income level, both circumstances that DHS will assess negatively in a public charge determination.

OTHER FEDERAL HEALTH CARE PROGRAMS

17. Will DHS count coverage through the Children's Health Insurance Program (CHIP) in public charge determinations?

No. The rule does *not* consider CHIP as a benefit for public charge purposes. Nonetheless, the rule is likely to deter enrollment in CHIP, which is both a financing source for Medicaid coverage (nearly 60% of CHIP enrollees were enrolled in Medicaid coverage financed by CHIP in 2016) and a standalone source of coverage that families may find difficult to distinguish from Medicaid. Many immigrant parents may be concerned about enrolling their children in CHIP, even though the rule exempts the use of Medicaid by children under 21 from public charge.

18. Will DHS count subsidies received through the Affordable Care Act (ACA) marketplace? How will the rule impact households with mixed eligibility for Medicaid and marketplace subsidies?

No. The rule does *not* consider the receipt of marketplace coverage or subsidies to be benefits for public charge purposes. (Notably, however, receiving marketplace subsidies will mitigate the extent to which DHS will *favorably* view a person's enrollment in private coverage.)

If members of a family receive both Medicaid and marketplace subsidies, DHS will only consider the benefits used by the immigrant subject to the public charge determination (not the benefits used by other household members). However, a household with members eligible for Medicaid and marketplace subsidies is likely to have a low income level—another factor that DHS will negatively consider during a public charge determination.

STATE-FUNDED HEALTH CARE PROGRAMS

19. Would participation in a state or locally funded health care program—such as the receipt of state-only Medicaid services—count as participating in a benefit for public charge purposes?

For public charge purposes, the only state and local programs that count as benefits are state, local, or tribal cash benefit programs for income maintenance (such as general assistance programs).²³ Thus, state-only funded Medicaid and other health care programs will *not* count in public charge determinations.²⁴

States will want to develop materials to explain that state-funded benefit programs are not included in public charge determinations to help reduce chilling effects on state-funded benefits. It will be particularly important to make the distinction clear in states that have adopted consistent program branding and do not distinguish between sources of funding for federally and non-federally funded programs. States may want to reconsider program branding or otherwise explain to immigrants that the benefits they are receiving are not federal benefits to help consumers avoid misreporting such benefits on the I-944 form as public benefits (which only requests information about federal Medicaid benefits). In response to a question from commenters, the preamble acknowledges the potential for confusion to the extent that states use the same name for their federal Medicaid and state-funded health insurance programs. The preamble states that “USCIS would assume that any Medicaid identified on the Form I-944 is Federal Medicaid.”²⁵

CONSEQUENCES FOR CONSUMERS AND HEALTH CARE ACCESS

20. How will the rule impact enrollment in Medicaid or other programs?

Distrust of DHS immigration enforcement as well as confusion and fear about to whom the rule does and does not apply could lead immigrants *not directly* impacted by the rule to forgo Medicaid, SNAP, and housing benefits out of concern that these programs will threaten their immigration status or the status of their loved ones. These “chilling effects” are likely to fall harder on immigrants of color, particularly Latinos and Asian American/Pacific Islanders who are more likely to live in benefit-receiving families.²⁶

These effects could be significant; an estimated 23 million noncitizens and U.S. citizens in immigrant families use public benefits today.²⁷ Some assessments of these chilling effects are below:

- › Manatt Health estimated the potentially affected Medicaid and CHIP population to be 13.2 million enrollees as of 2016 (based on the proposed rule).²⁸ This includes 4.4 million noncitizen adults and children who receive Medicaid/CHIP, as well as 8.8 million citizen adults and children with Medicaid/CHIP who are the family members of a noncitizen.
- › The Kaiser Family Foundation (KFF) estimated that more than 13.5 million Medicaid/CHIP enrollees are noncitizens or citizens living in a household with a noncitizen. Assuming possible disenrollment rates of 15 to 35 percent, KFF estimated that between 2.0 and 4.7 million people could leave these programs.²⁹ KFF also found that the rule could deter new enrollment among nearly 1.8 million uninsured individuals who are eligible for Medicaid/CHIP, not enrolled, and are noncitizens or live in a household with a noncitizen.

Though these reports were largely based on the proposed rule’s provisions, these broad chilling estimates still apply, since chilling effects—by definition—will impact participation in public programs well beyond the individuals affected by the public charge regulation.

21. Has a chilling effect already been observed?

Yes. Although DHS downplayed potential chilling effects throughout the rule's preamble,³⁰ chilling effects resulting from the DHS proposed rule have already been documented.³¹ From a survey of roughly 2,000 adults in immigrant families, the Urban Institute found that about 13.7 percent of respondents reported that they or a family member did not participate in a non-cash government program such as Medicaid/CHIP, SNAP, or housing subsidies in 2018 for fear of risking their ability to obtain a green card. This trend was higher (20.7%) for adults in low-income immigrant families. Higher chilling effects were reported for adults in households with children (as compared to households without children) and among Hispanic adults (as compared to non-Hispanic white and non-Hispanic non-white adults in immigrant families). Chilling effects were also reported in 14.7 percent of adults in families where all noncitizen members already had a green card, and in 9.3 percent of adults in families where all foreign-born members had become citizens. Finally, nearly two-thirds of respondents reported being aware of the public charge rule.

CONSEQUENCES FOR STATE MEDICAID AGENCIES AND MARKETPLACES

22. Are state benefit-granting agencies required to share data with DHS?

No. It is possible that at some point in the future, DHS will rely on data sharing to determine whether individuals ever applied for or used public benefits. The I-944 will require that immigrants sign a release (or a "Federal Agency Disclosure and Authorization"), which suggests that data sharing between DHS and other federal agencies is envisioned in the future. In the rule's preamble, DHS explains that "that part of the form will only become relevant after DHS enters into information sharing agreements with specific agencies to obtain verification of the information supplied by applicants."³² Federal and state data sharing protections apply to individuals who receive public benefits, and benefit agencies generally may share information with other federal government agencies only for the purposes of administering their programs. Still, this is an area that will require additional guidance and bears monitoring.

23. In many states, there are streamlined processes for applying for benefits that automatically screen individuals for eligibility for benefits that they may or may not seek. How will DHS treat these automatic applications for benefits? For example, how will DHS count marketplace applications that are reviewed for Medicaid eligibility?

Marketplace coverage and subsidies are *not* benefits for public charge purposes under the rule. However, states are required to assess for Medicaid eligibility an applicant for marketplace coverage, as part of the ACA "no wrong door" policy, which aims to enable people seeking coverage to complete just one application to determine their eligibility for health insurance affordability. States also routinely assess whether an applicant for state-funded benefits is eligible for federally funded Medicaid and are increasing the use of single program applications for multiple benefits programs (e.g., Medicaid, TANF, and SNAP). Commenters expressed concerns about whether such behind-the-scenes Medicaid eligibility verifications would be treated as an "application" for Medicaid for public charge purposes. While DHS acknowledged these concerns in the rule's preamble, it did not respond to the issue. More clarity is needed from DHS on this issue.

24. For the past several years, states have integrated eligibility and enrollment policies, operations and systems for Medicaid, marketplace subsidies, and other public programs. How could this rule affect these efforts?

Federal requirements and state efforts have focused on streamlining eligibility and enrollment processes to increase access to health coverage programs, providing 12 months of continuous health coverage to mitigate disruptions in care, and coordinating eligibility and enrollment across multiple health coverage and human services programs like Medicaid, TANF, and SNAP to address health and social factors.

As discussed above, most immigrants who are eligible for these benefits are not likely to be subject to a public charge determination, though chilling effects could lead individuals to forgo these programs. To protect progress made to streamline eligibility and enrollment while supporting immigrants navigating this new environment, states could evaluate their systems and facilitate changes to avoid automatically enrolling immigrants in public benefits that could jeopardize their immigration status. States could also consider developing robust consumer education materials to make immigrants aware of the need to assess the potential impact on their immigration status, and to connect immigrants to legal resources, if desired.

RELATED POLICY DEVELOPMENTS

25. What is the status of the Department of Justice (DOJ) proposed rule about deportability on public charge grounds?

As of the writing of this FAQ, DOJ is developing a proposed rule entitled *Inadmissibility and Deportability on Public Charge Grounds*. The rule is currently being reviewed by the Office of Management and Budget, which is the last step in federal agency review before a rule can be released. Once DOJ publishes its proposed rule, there will be a public comment period; nothing will change immediately, although it is likely that the DOJ rulemaking will contribute (and is already contributing) to chilling effects in immigrant communities.

Under current law, deportability on the grounds of public charge only applies to immigrants who have used benefits within five years after the date of entry for reasons that existed before they entered the country. In other words, if a green card holder had a pre-existing condition that was present when he or she adjusted status, and that illness led to medical needs that resulted in his or her use of benefits, the person could be deported. If new medical issues arose after admission, that would not be grounds for deportability.

The proposed DOJ rulemaking will not change these statutory grounds for deportability. Rather, our understanding is that the rule aims to conform the DOJ public charge process to the DHS public charge inadmissibility rule. In the preamble to the DHS rule, DHS says that it will work with DOJ to ensure consistent application of the public charge ground of inadmissibility.

26. How will the DHS public charge rule impact visa and green card determinations made by Department of State (DOS) consular officers abroad?

The DHS final rule does not directly impact DOS policies for reviewing visa or green card applications. The departments review applications at different stages of the immigration process: DHS makes determinations of admissibility at ports of entry and reviews green card applications submitted from within the United States, whereas DOS consular officers review visa and green card applications filed abroad. The DOS *Foreign Affairs Manual* (FAM) governs consular officers' review of these requests, including determinations related to public charge.

DOS has taken steps to align its standards and process with the DHS public charge rule. Last year, DOS updated the FAM to broaden the scope of benefits considered in public charge determinations to include noncash benefits. More recently, on October 11, 2019, DOS published an interim final rule (IFR) codifying policies that mirror those outlined by the DHS regulation.³³ Under the IFR, a consular officer will deny a visa request if an immigrant is determined likely at any time to become a public charge after admission, or if the immigrant fails to submit a sufficient affidavit of support. Officers will take into account the totality of the applicant's circumstances, as well as a person's receipt of Medicaid and other benefits. The IFR took effect on October 15, though the public may submit comments until November 12. The DOS rule is not impacted by the preliminary injunction delaying implementation of the DHS rule, but DOS has indicated that it will not implement the new policy until updated immigration forms are finalized.³⁴

In addition, DOS may promulgate procedures to implement a White House proclamation issued on October 2 that directs DOS to reject visa applications by immigrants who are unable to demonstrate that they will have health insurance in the United States or can pay for foreseeable medical costs.³⁵ This proclamation is scheduled to take effect on November 3.

27. How does recent guidance about sponsor deeming and responsibility relate to public charge?

On August 23, the Centers for Medicare & Medicaid Services (CMS) issued a letter to State Health Officials outlining states' responsibilities related to determining whether some sponsored immigrants are eligible for Medicaid and CHIP and, if they are, clarifying rules related to seeking repayment from sponsors for any such benefits used.³⁶ On the same day, the U.S. Department of Agriculture's Food and Nutrition Service (FNS) issued guidance encouraging, but not requiring, state agencies to seek reimbursement from sponsors for SNAP benefits used by sponsored immigrants.³⁷ The August guidance impacts immigrants who were approved for green cards and were required to have an affidavit of support from a sponsor. In general, the requirement for an immigrant to secure a sponsor and to have an affidavit of support applies to immigrants with a green card in a family-based immigration category.

Though they relate to immigrants' use of benefits, this guidance does *not* impact public charge determinations, which (as noted above) apply to different groups of people (noncitizens seeking to enter the country, extend or change visas, or obtain a green card—not to green card holders).

Sponsor deeming and responsibilities are already included in federal policy but have not always been robustly enforced. These provisions: (1) require that the income and resources of the sponsor be counted (or "deemed" to be available to the immigrant) when determining a sponsored immigrant's eligibility for federal means-tested public benefits, and (2) authorize the government to seek repayment for benefits used by sponsored immigrants. Federal regulations provide that states have the discretion to seek repayment from the sponsor. CMS and FNS issued their guidance now as required by a May 2019 Presidential Memorandum that directed federal agencies to issue clarifying guidance for better enforcement of these longstanding provisions.³⁸

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ABOUT MANATT HEALTH

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ENDNOTES

1. *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>.
2. *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).
3. 8 CFR 214.1(a)(3)(iv), as finalized in *Inadmissibility on Public Charge Grounds*, 84 Federal Register 157 (14 August 2019), pp. 41501. Hereafter, all references to regulatory provisions in the final rule will just use the CFR citation.
4. *Inadmissibility on Public Charge Grounds*, 84 Federal Register 157 (14 August 2019), pp. 41336-46.
5. 8 CFR 212.21(a).
6. 8 CFR 212.22(a), as amended in *Inadmissibility on Public Charge Grounds; Correction*, 84 Federal Register 191 (2 October 2019), pp. 52362.
7. *Ibid.* With respect to Medicaid, DHS expressly rejected arguments made by commenters that only months in which health services are actually received should count. DHS reasoned that being enrolled in Medicaid (rather than private insurance) is evidence of lack of self-sufficiency. See *Inadmissibility on Public Charge Grounds*, 84 Federal Register 157 (14 August 2019), pp. 41380-81.
8. 8 CFR 212.21(c).
9. Medicaid long-term care benefits, which were included in public charge determinations pursuant to the 1999 Field Guidance, are not specifically enumerated in the final rule because such benefits are subsumed into the broader Medicaid category.
10. 8 CFR 212.21(b)(9).
11. 8 CFR 212.21(b)(7).
12. 8 CFR 212.21(b)(7), as amended in *Inadmissibility on Public Charge Grounds; Correction*, 84 Federal Register 191 (2 October 2019), pp. 52362.
13. 8 CFR 212.22.
14. *New York et al. v. U.S. Dep't of Homeland Security (DHS) et al.*, No. 19 CIV. 7777-GBD (S.D.N.Y. Oct. 11, 2019); *Make the Road New York et al. v. Cuccinelli et al.*, No. 19 CIV. 7993-GBD (S.D.N.Y. Oct. 11, 2019); *Washington et al. v. DHS et al.*, No. 4:19-CV-5210-RMP (E.D. Wash. Oct. 11, 2019); *San Francisco et al. v. U.S. Citizenship and Immigration Services et al.* No. 19-CV-04717-PJH (N.D. Cal. Oct. 11, 2019) (also applicable to *California v. DHS*, No. 19-cv-04975-PJH and *La Clinica de la Raza v. Trump*, No. 19-cv-04980-PJH); *Casa de Maryland et al. v. Trump*, No. 8:19-cv-02715-PWG (D. Md. Oct. 14, 2019); and *Cook County et al. v. McAleenan*, No. 1:19-cv-06334 (Oct. 14, 2019). The DHS website now clarifies that the court orders postponed the effective date of the rule until there is a final resolution in the cases. *Final Rule on Public Charge Ground of Inadmissibility*. Washington, DC: U.S. Department of Homeland Security; 2019. Available at: <https://www.uscis.gov/legal-resources/final-rule-public-charge-ground-inadmissibility>. Accessed: October 25, 2019.
15. *Inadmissibility on Public Charge Grounds*, 84 Federal Register 157 (14 August 2019), pp. 41458.
16. 8 CFR 212.22(d).
17. *Form I-944, Declaration of Self-Sufficiency*. Washington, DC: U.S. Department of Homeland Security; 2019. Available at: <https://www.regulations.gov/document?D=USCIS-2010-0012-63785>. Accessed: October 14, 2019. Notably, DHS published a final version of Form I-944 at <https://www.uscis.gov/forms/i-944> days before the scheduled effective date; this final form was removed from the website following the injunctive orders out of New York, Washington, and California.
18. 8 USC 1101(a)(13)(C).
19. 8 CFR 212.21(b)(8).
20. 8 CFR 212.21(e).
21. For more information about school-based Medicaid services, see: *Medicaid in Schools*, MACPAC (2018), <https://www.macpac.gov/wp-content/uploads/2018/04/Medicaid-in-Schools.pdf>. Accessed: October 15, 2018.
22. Also known as Qualified Medicare Beneficiary (QMB), Specified Low-Income Beneficiary (SLMB), and Qualifying Individual (QI) programs.
23. 8 CFR 212.21(b)(1)(iii). *Inadmissibility on Public Charge Grounds*, 84 Federal Register 157 (14 August 2019), pp. 41501.
24. *Inadmissibility on Public Charge Grounds*, 84 Federal Register 157 (14 August 2019). The preamble to the rule notes that any state or local public benefits not specifically named will *not* be included in public charge determinations. DHS states that it "...has specifically listed the public benefits that will be considered" and "The list of designated benefits is exhaustive..." (pp. 41387) and that public benefits do not include "...exclusively state and local noncash aid programs." (pp. 41312).
25. *Inadmissibility on Public Charge Grounds*, 84 Federal Register 157 (14 August 2019), pp. 41382.

26. Batalova J, Fix M, Greenberg M. *Millions Will Feel Chilling Effects of U.S. Public-Charge Rule That Is Also Likely to Reshape Legal Immigration*. Washington, DC: Migration Policy Institute; 2019. <https://www.migrationpolicy.org/news/chilling-effects-us-public-charge-rule-commentary>. Accessed: September 18, 2019.
27. *Ibid.*
28. Mann C, Grady A, Orris A. *Medicaid Payments at Risk for Hospitals Under the Public Charge Proposed Rule*. Washington, DC: Manatt Health Strategies; 2018. https://www.manatt.com/Manatt/media/Documents/Articles/Medicaid-Payments-at-Risk-for-Hospitals-Under-the-Public-Charge-Proposed-Rule_Manatt-Health_Nov-2018.pdf. Accessed: September 18, 2019. This does not count all legal immigrants and family members who are eligible for Medicaid or CHIP, but only those who actually receive coverage.
29. Artiga S, Garfield R, Damico A. *Estimated Impacts of Final Public Charge Inadmissibility Rule on Immigrants and Medicaid Coverage*. Washington, DC: Kaiser Family Foundation. 2019. <http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-Final-Public-Charge-Inadmissibility-Rule-on-Immigrants-and-Medicaid-Coverage>. Accessed: September 23, 2019.
30. *Inadmissibility on Public Charge Grounds*, 84 Federal Register 157 (14 August 2019), pp. 41334. "Because DHS will not consider the receipt of public benefits by U.S. citizens and aliens not subject to public charge inadmissibility, the receipt of public benefits by these individuals will not be counted against or made attributable to immigrant family members who are subject to this rule. Accordingly, DHS believes that it would be unwarranted for U.S. citizens and aliens exempt from public charge inadmissibility to disenroll from a public benefit program or forego enrollment in response to this rule when such individuals are not subject to this rule. DHS will not alter this rule to account for such unwarranted choices." More detailed analysis of the impact of the final rule is available in *Regulatory Impact Analysis: Inadmissibility on Public Charge Grounds*. Washington, DC: U.S. Department of Homeland Security; 2019. Available at: <https://www.regulations.gov/document?D=USCIS-2010-0012-63741>. Accessed: September 15, 2019.
31. Bernstein H, Gonzalez D, Karpman M, Zuckerman S. *One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018*. Washington, DC: Urban Institute; 2019. https://www.urban.org/sites/default/files/publication/100270/one_in_seven_adults_in_immigrant_families_reported_avoiding_publi_7.pdf. Accessed: September 18, 2019.
32. *Inadmissibility on Public Charge Grounds*, 84 Federal Register 157 (14 August 2019), pp. 41457.
33. *Visas: Ineligibility Based on Public Charge Grounds* 84 Federal Register 54996 (11 October 2019). Available at: <https://www.federalregister.gov/documents/2019/10/11/2019-22399/visas-ineligibility-based-on-public-charge-ground>.
34. Bureau of Consular Affairs. *Information on Public Charge*. Washington, DC: U.S. Department of State; 2019. Available at: <https://travel.state.gov/content/travel/en/traveladvisories/ea/Information-on-Public-Charge.html>, noting that "The Department is seeking approval for use of a new form before it implements any changes to our processes. We will inform applicants of any changes to current visa application procedures." Accessed: October 17, 2019.
35. Trump DJ. *Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System*. Washington, DC: White House; 2019. Available at: <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-suspension-entry-immigrants-will-financially-burden-united-states-healthcare-system>. Accessed: October 20, 2019.
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38. Trump DJ. *Memorandum on Enforcing the Legal Responsibilities of Sponsors of Aliens*. Washington, DC: White House; 2019. Available at: <https://www.whitehouse.gov/presidential-actions/memorandum-enforcing-legal-responsibilities-sponsors-aliens>. Accessed: September 18, 2019.