



## American Heart Association Policy Statement Public Charge

January 2019

### Background:

The public charge test is longstanding federal immigration policy that has been applied under numerous administrations for more than 100 years. The term “public charge” is used to define a person who the government deems “primarily dependent on the government for subsistence.”<sup>1</sup> Federal authorities may deny immigration requests for individuals seeking to enter the United States or refuse to grant lawful permanent resident status to immigrants already in the country if the applicant is deemed by immigration officials to be- or likely to become- a “public charge.” Since the late 1990s, immigration officials have used two criteria for determining if an applicant will be deemed a public charge: the receipt of public cash assistance benefits such as Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI), or long-term care through Medicaid. If an applicant is found likely to become a “public charge” they are deemed inadmissible to the country or ineligible for lawful permanent residency. Obtaining lawful permanent residency is a key step for immigrants who may eventually seek citizenship through naturalization.

A proposed rule released in October of 2018 by the Trump administration seeks to make unprecedented changes to how public charge is administered. The rule, if finalized, would significantly expand the benefits criteria used by immigration officials to determine if an applicant is a public charge.<sup>2</sup> The proposed inclusion of critical safety-net programs such as (non-emergency and non-long-term care associated) Medicaid, the Supplemental Nutrition Assistance Program (SNAP), Section 8 housing assistance, and Medicare Part D subsidies for prescription drugs, would have broad consequences – not only for prospective immigrants, but also for lawful, working U.S. immigrants and their U.S. citizen children, spouses, and relatives who use public benefits for which they fully qualify. Health coverage losses could reduce access to care, contributing to worse overall health outcomes, particularly for the one in four U.S. citizen children with a noncitizen parent.<sup>3</sup> Legal immigrants may be less willing to visit the doctor or seek preventive care, leading to health complications or the development of complex chronic diseases that otherwise could have been mitigated by a visit to a medical professional. Reduced participation in SNAP could also lead to negative health outcomes, causing a spike in the prevalence of conditions associated with poor nutrition, such as diabetes, high blood pressure, or heart disease. Without prescription drug discounts, older immigrants may be unable to access or adhere to the medications they need but can no longer afford.

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<sup>1</sup> U.S. Citizenship and Immigration Services. Public Charge Fact Sheet. April 2011. <https://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet>.

<sup>2</sup> Department of Homeland Security. DHS Announces New Proposed Immigration Rule to Enforce Long-Standing Law that Promotes Self-Sufficiency and Protects American Tax Payers. September 22, 2018. <https://www.dhs.gov/news/2018/09/22/dhs-announces-new-proposed-immigration-rule-enforce-long-standing-law-promotes-self>

<sup>3</sup> Artiga, S, Damico, A, Garfield, R. *Potential Effects of Public Charge Changes on Health Coverage for Citizen Children*. Kaiser Family Foundation; May 2018. [https://www.kff.org/report-section/potential-effects-of-public-charge-changes-on-health-coverage-for-citizen-children-issue-brief/#endnote\\_link\\_257512-5](https://www.kff.org/report-section/potential-effects-of-public-charge-changes-on-health-coverage-for-citizen-children-issue-brief/#endnote_link_257512-5)



Hospitals would undoubtedly experience increased costs and higher rates of uncompensated care. Moreover, poverty and housing instability rates would surge, resulting in reduced rates of productivity and educational attainment.<sup>4</sup>

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996- which limited benefit access for lawful permanent residents- and the subsequent withdrawal of scores of immigrants from public benefit programs illustrates the potential scale of the chilling effect that could accompany the proposed changes to public charge. Analysis following the introduction of the welfare reform law shows a sharp decline in benefit participation by immigrant families, including those whose eligibility was unchanged by the law.<sup>5</sup> Food stamp (now known as SNAP) use fell by 43% among U.S. citizen children with a noncitizen parent in a five-year period, and 60% among refugees, even though their eligibility was not restricted by the law. Over the same period, Medicaid use dropped 17% among noncitizens and 39% among refugees. For TANF, enrollment dropped 44% for non-citizens and 78% for refugees.<sup>5</sup>

Efforts to reform public charge policy should not impede access to healthcare, housing, nutrition, or any other social determinant of health. Policymakers should consider how proposed changes might exacerbate existing health disparities, particularly for a population that already must overcome significant barriers to healthcare and upward mobility. The families that would be most affected by the proposed changes to public charge have entered the country legally and often find employment in low-wage jobs that offer little to no benefits.<sup>6</sup> Public assistance programs offer a fundamental lifeline for these families to stay healthy, remain productive and thrive. Moreover, narrowing immigrants' latitude to access public benefits will not promote self-sufficiency, as the administration submits.<sup>7</sup> On the contrary, research shows that programs that help families struggling to afford the basics effectively improve self-sufficiency and have long-term health and psychological benefits for families and children.<sup>8</sup>

The American Heart Association (AHA) has long advocated for policies that bring quality, affordable healthcare and programs that promote well-being within reach for every community. Cardiovascular

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<sup>4</sup> Kaiser Family Foundation. Proposed Changes to "Public Charge Policies for Immigrants: Implications for Health Coverage. September 2018. <https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/>

<sup>5</sup> Batalova J, Fix M, Greenberg M. *Chilling effects: the expected public charge rule and its impact on legal immigrant families' public benefits use*. Washington, DC: Migration Policy Institute; June 2018 <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>

<sup>6</sup> Capps, R, Fix, M, Henderson, E, Reardon-Anderson, J. A Profile of Low-Income Working Immigrant Families. Washington DC; The Urban Institute; June 2005. <https://www.urban.org/sites/default/files/publication/51641/311206-A-Profile-of-Low-Income-Working-Immigrant-Families.PDF>

<sup>7</sup> Department of Homeland Security, Ibid.

<sup>8</sup> Hoynes, H, Schanzenbach DW, Almond, D. Long-run impacts of childhood access to the safety net. *American Economic Review*. 2016; 106(4): 903-934. <https://gspp.berkeley.edu/assets/uploads/research/pdf/Hoynes-Schanzenbach-Almond-AER-2016.pdf>



disease (CVD) is not only the leading cause of death in the United States but is also one of the nation's costliest chronic diseases.<sup>17</sup> As such, we support efforts to eliminate disparities and expand access to

meaningful and equitable health coverage as well as the wide range of services patients need to prevent, treat, and mitigate the growing burden of heart disease. The proposed overhaul to public charge policy would jeopardize access to health care, food security, and economic stability for immigrant families across the country, compromising the work of the millions of people who work each day to help everyone in our nation build healthier lives free of heart disease and stroke. To that end, AHA opposes the proposed changes to the public charge rule.

### Current Landscape:

The abiding interpretation of public charge policy, outlined in guidance issued in 1999, is that an immigrant could be considered a public charge if they are primarily dependent on government benefits for over half of their income.<sup>18</sup> For the purpose of public charge determinations, "government benefits" have been narrowly defined as *cash assistance* benefits such as the TANF and SSI programs, state/local cash assistance programs, and long-term, institutionalized care paid for by Medicaid. Aside from usage of government benefits, immigration officials consider several other factors as part of the "totality of the

## Benefits of Programs Proposed for Inclusion in Public Charge Determinations

### Medicaid

Medicaid, in addition to CHIP, which is being considered for inclusion in the list of expanded benefits, both support families' ability to work and care for their children and protect them against prohibitive healthcare costs. Given that more than ten million U.S. citizen children have at least one noncitizen parent, and more than two-thirds of citizen children with a noncitizen parent have family incomes below 250% FPL,<sup>9</sup> many are within the income eligibility limits for Medicaid or CHIP. In fact, Medicaid and CHIP covers over half (56%) of citizen children with a noncitizen parent.<sup>10</sup>

### SNAP

SNAP benefits insulate many vulnerable populations from food insecurity, including many low-income immigrants, children, people with disabilities, and older Americans. SNAP has an impact on health, educational attainment, and economic self-sufficiency.<sup>11</sup> Children whose pregnant mothers had access to SNAP have shown lower rates of infant mortality and low birthweight,<sup>12</sup> and children who participate in SNAP have a decreased likelihood of developing obesity, high blood pressure, heart disease, and diabetes.<sup>13</sup>

### Section 8 Housing Assistance

Section 8 assistance makes housing more affordable for low-income families, enabling them to move to safer neighborhoods and reducing housing insecurity. Subsidized housing programs have been associated with positive physical and mental health outcomes for children and their families, and the mitigation of several factors that can impair a child's academic success such as frequent moves, school transitions, and homelessness.<sup>14</sup>

### Medicare Part D Premium and Cost Sharing Subsidies

Consumers who are unable to obtain medications that help manage their health can have serious negative consequences on both their long-term health and can contribute increased systemic costs. The Medicare Part D subsidy provides additional cost-sharing assistance for low-income Medicare beneficiaries (less than 150% of the FPL) to help them afford their necessary prescription drugs.<sup>15</sup> Reducing out-of-pocket costs has been identified as a key factor in improving medication adherence, and consequently improving health outcomes and reducing healthcare costs.<sup>16</sup>

<sup>9</sup> Potential Effects of Public Charge on Health Coverage for Citizen Children, Ibid.



circumstances” when making public charge determinations, including age, health, assets, resources, financial status, education, and skills. In addition, certain groups of people are exempt from public charge, including refugees, asylum applicants, and several other protected classes.<sup>19</sup> Currently, only 3% of noncitizen immigrants use cash benefits,<sup>5</sup> making admission or green card denials on the grounds of public charge relatively rare.

Draft rules leaked in January<sup>20</sup> and March<sup>21</sup> of 2018 signaled plans to abandon the longstanding application of public charge policy and radically change how public benefits are considered when making public charge determinations. The proposed rule released by the Department of Homeland Security (DHS) in October 2018<sup>22</sup> is slightly more moderate than the language leaked earlier in the year. However, the proposed rule still dramatically alters public charge by qualifying the government to consider immigrants’ use – or likelihood of using – a broad array of government services aimed to assist low-income, and otherwise vulnerable populations. This expanded list of services is broken down into two categories: “non-monetized” benefits including non-emergency Medicaid and Medicare Part D subsidies for prescription drugs; and “monetized” benefits including the SNAP and Section 8 housing benefits, in addition to TANF, SSI, and state/local cash assistance programs which are already covered under current guidance. DHS is also considering adding the Children’s Health Insurance Plan (CHIP) – a program that provides health

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<sup>10</sup> Potential Effects of Public Charge on Health Coverage for Citizen Children, *Ibid.*

<sup>11</sup> American Heart Association. Farm Bill Policy and the Supplemental Nutrition Assistance Program (SNAP). March 2017. [https://www.heart.org/-/media/files/about-us/policy-positions/prevention-nutrition/farm-bill-policy-and-snap-ucm\\_494779.pdf?la=en&hash=6535F1BDA73DDC46585CD868AB5A1A1B0FDCD824](https://www.heart.org/-/media/files/about-us/policy-positions/prevention-nutrition/farm-bill-policy-and-snap-ucm_494779.pdf?la=en&hash=6535F1BDA73DDC46585CD868AB5A1A1B0FDCD824)

<sup>12</sup> Shapiro, I. *The Safety Net’s Impact: A State-by-State Look*. Center on Budget and Policy Priorities; August 2016. <https://www.cbpp.org/blog/the-safety-nets-impact-a-state-by-state-look>

<sup>13</sup> Long-run Impacts of Childhood Access to the Safety Net, *Ibid.*

<sup>14</sup> Bailey KT, Cook JT, Ettinger de Cuba S, Casey PH, Chilton M, Coleman SM, Cutts DB, Heeren TC, Rose-Jacobs R, Black MM, Frank DA. Development of an index of subsidized housing availability and its relationship to housing insecurity. *Housing Policy Debate*. 2016; 26(1): 172-187.

<sup>15</sup> Kaiser Family Foundation. The Medicare Part D Prescription Drug Benefit. October 2017. <https://www.kff.org/medicare/fact-sheet/the-medicare-prescription-drug-benefit-fact-sheet/>

<sup>16</sup> Eaddy MT, Cook CL, O’Day K, Burch SP, Cantrell CR. How patient cost-sharing trends affect adherence and outcomes: a literature review. *Pharmacy and Therapeutics*. 2012; 37: 45-55.

<sup>17</sup> American Heart Association. Projections of Cardiovascular Disease Prevalence and Costs: 2015-2035. November 2016. <https://www.heart.org/-/media/files/get-involved/advocacy/burden-report-technical-report.pdf?la=en&hash=1A1D32EB3232654F10E5EF44FCDCBE58DEB70CE9>

<sup>18</sup> U.S. Citizenship and Immigration Services. Field Guidance on Deportability and Inadmissibility on Public Charge Grounds. May 1999. <https://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-54070/0-0-0-54088/0-0-0-55744.html>

<sup>19</sup> U.S. Citizenship and Immigration Services. Public Charge. September 2018. <https://www.uscis.gov/greencard/public-charge>

<sup>20</sup> Department of Homeland Security. Inadmissibility on public charge grounds. January 2018. [https://cdn.vox-cdn.com/uploads/chorus\\_asset/file/10188201/DRAFT\\_NPRM\\_public\\_charge.0.pdf](https://cdn.vox-cdn.com/uploads/chorus_asset/file/10188201/DRAFT_NPRM_public_charge.0.pdf)

<sup>21</sup> Department of Homeland Security. Inadmissibility on public charge grounds. March 2018. <http://apps.washingtonpost.com/g/documents/world/read-the-trump-administrations-draft-proposal-penalizing-immigrants-who-accept-almost-any-public-benefit/2841/>.

<sup>22</sup> Inadmissibility on Public Charge Grounds, § 83 FR 51114; October 10, 2018. <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>



coverage for children from low-income families – to the list of included benefits. Safety-net programs such as those proposed for the inclusion in public charge determinations have been proven to lift working, low-income American citizens and legal immigrants above the poverty line and support their ability to provide for their families. The expansion would mark a harmful departure from previous guidance that clarified an immigrant's use of Medicaid, CHIP, or other safety net programs would not harm their immigration case, noting that ongoing confusion about public charge policies "deterred eligible aliens and their families, including U.S. citizen children, from seeking important health and nutrition benefits that they are legally entitled to receive."<sup>23</sup> If this rule is finalized, we can no longer offer immigrant families that assurance.

In comparison with the 3% of noncitizens whose benefits usage could currently be used in a public charge determination, the share of noncitizens receiving means-tested benefits (public cash assistance, SNAP, Medicaid and CHIP) that could be considered under the proposed rule is 47%.<sup>24</sup> As undocumented immigrants are already ineligible for most of the benefits programs on the expanded list, the proposed regulation clearly targets lawful, tax-paying immigrants and their families, putting them in a position to choose between vital assistance for food, shelter and healthcare, or permanent settlement in the United States.

There are three tests officials would use to determine an immigrant's reliance on public benefits:

1. Individual use of "monetized" benefits for a 12-month period that total more than 15 percent of the Federal Poverty Level (FPL) for a single-person household, *or*
2. Individual use of "non-monetized" benefits for a 12-month period at any time over the previous 36-months, *or*
3. Any individual use of "monetized" benefits *plus* individual use of "non-monetized" benefits for more than nine months in any previous 36-month period.<sup>18</sup>

Failure of any of these tests would be considered a "heavily weighted negative factor" in public charge determinations. Other factors that would be weighed negatively include being under 18 or over 61 (essentially being a child or a senior) and earning under 125% of the FPL (\$31,375 annually for a family of four in 2018). Additionally, having a pre-existing health condition likely to require extensive treatment would be weighed negatively if the applicant is unable to show they have unsubsidized health insurance or the financial resources to cover the cost of care. On the contrary, having an annual income 150-250% (\$37,650-\$62,750 for a family of four in 2018) of the FPL would be considered a positive factor and annual income over 250% of the FPL would be weighted as "strongly positive." These new considerations would likely affect immigrants admitted based on family reunification the most, as this group accounts for nearly half of all green cards. Family-based immigrants tend to be older, less educated, and have lower incomes<sup>6</sup>, making them more likely to fall into one of the negative factor categories and deemed a public charge. Applicants who are refused entry to the United States or lawful permanent residency on the basis of public charge may be offered the opportunity pay the government a bond of \$10,000 at minimum to remove the

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<sup>23</sup> USCIS, Field Guidance on Deportability, Ibid.

<sup>24</sup> Chilling Effects, Ibid.



designation. However, should the immigrant use any benefits listed in the rule within five years of lawful permanent residency, they risk losing the bond entirely. This policy invites the possibility for income-based discrimination.

Though the rules governing public charge have not yet changed, mere speculation has cultivated an environment of fear and anxiety among immigrant families across the country. Many immigrants have already begun to disenroll their families from necessary nutrition and health services out of fear that receiving these benefits will jeopardize their immigration status. Several organizations working with undocumented and documented immigrants have reported eligible families backing out of Medicaid, SNAP, and CHIP.<sup>25</sup> Additionally, WIC (The Supplemental Nutrition Program for Women, Infants and Children) agencies—which provide healthcare and nutrition assistance to low-income women, their infants and children under age five— in at least 18 states report enrollment declines of up to 20%<sup>26</sup>—a sign that even the threat of a potential demerit could spur an exodus from the safety-net among immigrants.

#### **American Heart Association Position on Public Charge:**

Benefits programs such as Medicaid, Medicare, SNAP, and Section 8 were developed to help vulnerable American citizens and legal immigrants obtain housing, nutrition, and healthcare they otherwise would not be able to afford. For decades, public charge has been applied in a way that allows immigrants with legal status to access these essential safety-net services and programs without fear of compromising their ability to stay in this country. Tethering an immigrant's usage of basic public benefits to which they are legally entitled, to the ability to obtain lawful permanent residency is not only a dramatic departure from the original intent of these programs, but it is fundamentally at odds with the association's support of policies that promote healthy behaviors, access to quality, affordable healthcare, and overall well-being. Expanding the benefits criteria for public charge will almost certainly cause immigrant families to forego necessary care and assistance, resulting in far-reaching consequences for immigrants that will extend to the healthcare system, workforce, education attainment, and public health of our nation.

We oppose any change to public charge policy that would restrict access to critical support services, cause health coverage losses, lead to negative health outcomes, and force immigrant families to make an impossible choice between financial assistance to meet their basic needs and their ability to stay together or reunite in the United States. We encourage the current administration and future administrations to instead pursue policies that ensure every community has access to the quality, equitable programs and services they need to provide for their families.

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<sup>25</sup> Lowery A. Trump's Anti-Immigrant Policies are Scaring Eligible Families Away from the Safety Net. *The Atlantic*. March 24, 2017. <https://www.theatlantic.com/business/archive/2017/03/trump-safety-net-latino-families/520779/>

<sup>26</sup> Evich, HB. "Immigrants, fearing Trump crackdown, drop out of nutrition programs." *Politico*. September 4, 2018. <https://www.politico.com/story/2018/09/03/immigrants-nutrition-food-trump-crackdown-806292>