

# FACT SHEET

## The New 'Public Charge' Rule: Impact on Populations and Stakeholders



## Introduction

A proposed rule, published in the Federal Register on October 10, 2018<sup>1</sup>, makes several significant changes to the criteria used to determine whether an individual is likely to become a public charge. First, it changes the definition of “public charge” from “an individual who is primarily dependent on public benefits” to an individual who “receives one or more public benefits.” However, the public charge test is still a “totality of circumstances” test that looks at factors such as age, health, family status/household size, financial resources and education when assessing whether an individual is likely to become a public charge. Additionally, the new rule: 1) expands the definition of “public benefits” to include most forms of Medicaid, the Medicare Part D Low-Income Subsidy program, Supplemental Nutritional Assistance Program (SNAP), and Section 8 housing programs, 2) expands the categories of immigrants who are subject to the test to include individuals seeking to extend or change their visa status, and 3) imposes harsh income restrictions, in which being at or below 125% of the federal poverty level (FPL) is a new factor. Due to these changes, many populations and stakeholders could be adversely affected by experiencing barriers to health, housing and food services or reduced revenues, as described in detail below. Comments on the proposed rule are due by December 10, 2018.

## Women

Women are at an increased risk of being determined a public charge due to their household size and receipt of public benefits such as Medicaid. Specifically, household size is one of the factors of the public charge test<sup>2</sup>, and since women make up 80% of all single-parent households<sup>3</sup>, they are disproportionately at risk of being determined a public charge based on their household size. Additionally, because 34 states and the District of Columbia allow pregnant women who are lawful permanent residents (i.e., green card holders) to access Medicaid without waiting 5 years under the Immigrant Child Health Improvement Act<sup>4</sup>, pregnant women are now at an increased risk of being determined a public charge due to their Medicaid enrollment.

## Children

Children are at an increased risk of being determined a public charge due to their age and receipt of public benefits such as Medicaid and SNAP. Age is a factor in the public charge test, and being under the age of 18 will be considered a negatively-weighted factor<sup>5</sup> in the test. Additionally, and as mentioned above, because 34 states and the District of Columbia allow lawful permanent resident children to access Medicaid without waiting 5 years under the Immigrant Child Health Improvement Act, a child's enrollment in Medicaid puts him or her at an increased risk of being determined a public charge.

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### People with Disabilities

Since health status is one of the factors of the public charge test<sup>6</sup>, individuals with disabilities are at an increased risk of being determined to be a public charge based on their disability. The test looks into<sup>7</sup> whether an individual has any physical or mental condition that is “significant enough to interfere with the person’s ability to care for him- or herself, or to attend school or work, or that is likely to require extensive medical treatment or institutionalization in the future.”

### Older Adults

Older adults are at an increased risk of being determined likely to become a public charge based on their age<sup>8</sup>, ability to work and health status. Specifically, being over 61 years-old will be considered a negatively-weighted factor in the test. Additionally, older adults’ ability to work and eligibility for Medicare Part D benefits, a new benefit added to the public charge test, would also be factors considered in the public charge determination.

### People living with chronic conditions

As mentioned above, because health status is one of the factors of the public charge test, people living with chronic conditions are at an increased risk of being determined a public charge due to their condition. The test evaluates whether an individual has any conditions that may generate health care costs that he or she is unable to afford, and that may also reduce that person’s ability to attend school, work, or financially support him or herself. Additionally, the test will evaluate whether an individual’s medical condition(s) may increase the likelihood that he or she could resort to Medicaid, or premium and cost-sharing assistance for Medicare Part D. The rule notes that “the inability to work due to a medical condition, and failure to maintain health insurance or the financial resources to pay for the medical costs, could make it likely that [an individual] would become a public charge.”<sup>9</sup>

### Low-Income Individuals

Low-income individuals are at an increased risk of being determined to be a public charge based on their income. The new rule adds being below 125% FPL<sup>10</sup> as one of the factors in the “Assets, Resources and Financial Status”. The only positively-weighted factor is being at or likely to be at 250% FPL. Currently, 250% FPL is about \$62,000<sup>11</sup> for a family of four, which is more than the current median household income<sup>12</sup> in the United States.

### Health Professionals

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Health professional may experience reduced payments from public health insurance programs as a result of the rule. The rule explicitly states<sup>13</sup> that the rule “might result in reduced revenues for healthcare providers participating in Medicaid, pharmacies that provide prescriptions to participants in the Medicare Part D Low Income Subsidy (LIS) program [and] companies that manufacture medical supplies or pharmaceuticals.”

### Hospitals

Hospitals are likely to see an increase in uninsured patients and uncompensated care costs as a result of the rule. The rule explicitly states<sup>14</sup> that “the primary sources of the consequences and indirect impacts of the proposed rule would be costs to various entities that the rule does not directly regulate, such as hospital systems.” Since the new public charge test may discourage individuals from applying for public health insurance programs such as Medicaid and Medicare, hospitals may see a rise in uninsured patients which will result in increased uncompensated care costs. The rule also acknowledges that the new test may result in adverse health effects and additional medical costs due to delayed health care treatment, burdens which hospitals are likely to bear.<sup>15</sup>

### States

States will likely experience increased costs associated with implementing the new rule, including updating their technological infrastructure of state agencies such as Medicaid or other social service agencies and creating or updating other systems that can better track public benefit use.

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- <sup>1</sup> <https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf>
- <sup>2</sup> <https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf#page=62>
- <sup>3</sup> <https://www.census.gov/data/tables/2016/demo/families/cps-2016.html>
- <sup>4</sup> [https://ccf.georgetown.edu/wp-content/uploads/2018/05/ichia\\_fact\\_sheet.pdf](https://ccf.georgetown.edu/wp-content/uploads/2018/05/ichia_fact_sheet.pdf)
- <sup>5</sup> <https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf#page=67>
- <sup>6</sup> <https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf#page=68>
- <sup>7</sup> <https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf#page=69>
- <sup>8</sup> <https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf#page=66>
- <sup>9</sup> <https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf#page=69>
- <sup>10</sup> <https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf#page=74>
- <sup>11</sup> <https://familiesusa.org/product/federal-poverty-guidelines>
- <sup>12</sup> <https://www.census.gov/library/publications/2018/demo/p60-263.html>
- <sup>13</sup> <https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf#page=5>
- <sup>14</sup> <https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf#page=147>
- <sup>15</sup> <https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf#page=157>