



CALIFORNIA
HIV / AIDS POLICY
RESEARCH CENTERS

HIV Prevention and Treatment Under the Final Public Charge Rule

Notice

UPDATED (8/24/20): On August 12, 2020, a U.S. Court narrowed its decision to temporarily stop implementation of the final public charge rule. This injunction to the rule applies only to New York, Connecticut and Vermont. The Department of Homeland Security has resumed implementation of the Final Rule in California as being in effect since February 24, 2020.

Background

The U.S. government made changes to its public charge rule in 2019. This resource describes what this rule is, key aspects of the final rule issued by the Department of Homeland Security and how it might affect some immigrant clients and patients. There is great concern among those individuals using public benefits, including HIV-related health and social services, and fear that doing so could put them or their family at risk for deportation or hurt their chances of gaining legal immigrant status. This fact sheet is designed specifically to offer healthcare and social service providers with updated information related to the final public charge rule and specific recommendations that may help to address the needs of immigrant people living with and at risk for HIV.

The 5 most important things to know right now are...

- 1. HIV treatment and prevention is vital.** Any disruption to your care may cause significant health problems. Before clients/patients make any decisions not to access HIV prevention or treatment services or discontinue services they currently receive, connect them to legal resources. *For more information on resources, see question 3.*
- 2. Public charge may not apply.** If the rule does not apply to the client/patient, they do not need to worry about accessing services, including HIV-related services. *For more information, see questions 2 and 4.*
- 3. The public benefits and services you or your agency provide may not be included in the enumerated programs listed in the final rule.** This means your clients/patients may not need to stop using these programs. Learn more about how your programs are funded so you can better advise your clients/patients. *For more information, see questions 5 through 7.*
- 4. Federal and state laws protect the privacy of those who seek help from public programs.** Benefit agencies may only share information with other government agencies to administer their programs, with limited exceptions. If your clients/patients are asked about their

immigration status, teach them 2 rules: (a) only provide information that is required; and (b) never misrepresent anything when completing public benefit applications or dealing with any government agency.

5. The Final Rule will be implemented on February 24, 2020, however this is not the final outcome of this issue. The final rule will be implemented for now, but this is not necessarily a permanent and final decision. *For more information, see question 8.*

For more details about public charge, please see below:

<p>1. What is public charge?</p>	<p>Public charge is the language used by the government to describe someone who they think will become dependent on government assistance for their primary source of support to live in the U.S. in the future. Immigration officials apply a public charge rule to help decide whether to approve an application for a green card (i.e. legal permanent residence or LPR status) or when deciding who they will allow to enter into the U.S.</p>			
<p>2. Does the public charge rule apply to my client/patient?</p>	<p>The final rule makes clear that the rule applies only to some people. These categories are as follows:</p> <table border="1" data-bbox="505 835 1422 1854"> <tr> <td data-bbox="505 835 971 1854"> <p>Yes, the public charge rule may apply to your client/patient if they fall into one of the categories below:</p> <ul style="list-style-type: none"> • They are currently applying for your green card in the U.S.(<i>but see exceptions below</i>)* • They currently have a green card but have been out of the country for more than 6 months • They have a nonimmigrant visa (e.g. student, tourist, temporary work) that they wish to extend • They want to change between one nonimmigrant visa to another • They are outside of the U.S. and are trying to enter the U.S. lawfully </td> <td data-bbox="971 835 1422 1854"> <p>No, the public charge rule does not apply to your client/patient if they fall into one of the categories below:</p> <ul style="list-style-type: none"> • They are a U.S. citizen • They have a green card (LPR status) • They have a green card and are applying for citizenship • They were granted Withholding of Removal, Convention Against Torture, or their case was administratively closed by the Department of Justice • They are applying for the following status: Refugee, Asylum, T Visa, U Visa, VAWA self-petitioner, SIJS (Special Immigrant Juvenile Status), renewal for DACA, TPS (Temporary Protected Status) and other special categories. • They are applying for their green card and currently have the following status: Refugee, Asylum, T Visa, U Visa, and VAWA </td> </tr> </table>		<p>Yes, the public charge rule may apply to your client/patient if they fall into one of the categories below:</p> <ul style="list-style-type: none"> • They are currently applying for your green card in the U.S.(<i>but see exceptions below</i>)* • They currently have a green card but have been out of the country for more than 6 months • They have a nonimmigrant visa (e.g. student, tourist, temporary work) that they wish to extend • They want to change between one nonimmigrant visa to another • They are outside of the U.S. and are trying to enter the U.S. lawfully 	<p>No, the public charge rule does not apply to your client/patient if they fall into one of the categories below:</p> <ul style="list-style-type: none"> • They are a U.S. citizen • They have a green card (LPR status) • They have a green card and are applying for citizenship • They were granted Withholding of Removal, Convention Against Torture, or their case was administratively closed by the Department of Justice • They are applying for the following status: Refugee, Asylum, T Visa, U Visa, VAWA self-petitioner, SIJS (Special Immigrant Juvenile Status), renewal for DACA, TPS (Temporary Protected Status) and other special categories. • They are applying for their green card and currently have the following status: Refugee, Asylum, T Visa, U Visa, and VAWA
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*Exceptions: If you are applying for your green card and currently have the following status: Refugee, Asylum, T Visa, U Visa the public charge rule does not apply to you.

<p>3. What if my client/patient doesn't know their current immigrant status?</p>	<p>Knowing their current immigrant status is the first step for your client/patient to know if the public charge rule does or does not apply to them. If they have any questions about how to find out more information about their immigration status, contact an immigration attorney or Department of Justice-accredited representative. Click here or go to http://www.cdss.ca.gov/Benefits-Services/More-Services/Immigration-Services/Immigration-Services-Contractors to find a California state-funded resource near you.</p> <p>An additional resource developed by policy advocates is an online and text-based tool for individuals to determine whether the public charge rule applies. It can be accessed here https://www.keepyourbenefitsca.org/en in English or https://www.keepyourbenefitsca.org/es in Spanish. Additionally, individuals may text the word “benefits” (for English) , “libre” (for Spanish), “福利” (Chinese) or “lợi ích” (Vietnamese) to 650-376-8006 to access information on whether the public charge rule may apply to them.</p>
<p>4. Does the public charge rule apply to my client/patient if they are currently undocumented?</p>	<p>If your client/patient is currently undocumented, the most important thing to do is to determine whether they have any opportunity to get legal permanent resident status. That may be through a family member, or some other kind of legal status. An evaluation by a legal services provider is necessary to determine what type of relief is available to the client/patient.</p> <p>If, however, there is no path for the client/patient to gain any legal status at this time, then they will not be evaluated for public charge at this time. Given the uncertain possibility that a pathway to legal status might be established sometime in the future, providers may consider helping clients/patients to assess how best to prioritize their health.</p>
<p>5. What public benefits were specifically included in the final public charge rule?</p>	<p>The final public charge rule which comes into effect on February 24, 2020, includes consideration of a variety of factors and specifically looks at the applicant's use of the following public benefits programs:</p> <ul style="list-style-type: none"> • Cash assistance (e.g. General Relief/Assistance, Supplemental Security Income (SSI), Temporary Assistance for Needy Families—Cal Works) • Programs paying for institutionalization for long-term care (e.g. nursing home care or mental health institution) • Food stamps or Supplemental Nutrition Assistance Program (CalFresh) • Section 8 Housing Choice Vouchers, Project-Based Rental Assistance and subsidized public housing • Non-Emergency Medicaid (Medi-Cal)

<p>6. What about public services and benefits programs not listed above?</p>	<p>Under the final rule, the individual applicant’s use of public benefits is considered. Use of public benefits by family members (e.g. U.S. citizen children), even those benefits listed above, are <u>not</u> considered to be use of a public benefit(s) by the applicant.</p> <p>The use of any public benefits and health services that are <u>not</u> included in question 5 are not considered as part of the public charge determination. This means applicants that are evaluated for public charge do not have to worry about using any public benefits and services that are not listed above.</p> <p>For many immigrant clients and patients affected by HIV, this means that as long as they are not using federal Medicaid (Medi-Cal) programs, they do not have to worry about accessing HIV treatment and prevention services. This is because state- and locally-funded health coverage and most importantly, life-saving care offered by other funding sources, such as the Ryan White CARE Act program and its AIDS Drug Assistance Program (ADAP) or California’s state-funded PrEP Assistance Program, are <u>not</u> included in the public charge determination.</p>
<p>7. What are the main differences between the prior public charge test and the final rule?</p>	<p>There are many ways that the public charge determination will have harsh consequences for people who are subject to the rule. While each applicant under the proposed changes would be evaluated under the rule as an individual, the person’s circumstances will be looked at carefully. They will look at the applicant’s age, health, family status, financial assets and resources, education, and skills. Additionally, the final rule includes weighing heavily certain factors such as income, as well as a person’s ability to work, go to school or care for themselves. Being unable to do these things would be considered a negative factor.</p>
<p>8. Is the final public charge rule in effect?</p>	<p>Yes, for now. The U.S. Supreme Court’s decision allows the rule to take effect at this time. If the rule applies to a client/patient, beginning on February 24, 2020, the individual’s use of any of the public benefits listed under questions 5 that are used on or after February 24, 2020, will be considered in the public charge determination. Please note the final outcome of the public charge rule has not yet been resolved by the courts as the lawsuits will continue to move forward in the lower courts. For more information, click here or go to https://protectingimmigrantfamilies.org for updates on the rule.</p>

The 5 most important things providers can do to help:

- 1. Learn about the source of funding utilized in your program.** Affected clients/patients need to know this information to make an informed decision about whether to access services. Therefore, providers must have this information to be able to advise and assure their clients/patients. This is especially important for providers offering services related to housing (e.g. Section 8 Housing Choice Voucher and Project-Based Assistance) and nutrition (e.g. CalFresh) as these programs are newly implicated in the final rule on public charge.
- 2. Providers must increase partnerships with legal services organizations to facilitate clients’/ patients’ access to legal consultation.** Clients/patients need legal consultation as they must

know their immigration status to understand whether the rule applies to them. Help facilitate appropriate referrals to legal partners with resources outlined under question 3.

- 3. Help educate legal providers serving your clients/patients.** People living with and at risk for HIV have access to a myriad of publicly funded HIV-related services, however, few legal providers understand the sources of funding for these services. To facilitate accurate counsel and advice, consider working with legal providers to educate them about your program and its funding.
- 4. If you must ask about a client's/patient's legal status as part of the provision of services, consider how to do this first.** Some agencies may not have developed a practice across the board on how best to broach the topic of immigration with their clients/patients. Consider doing so. Regardless of what practices have or have not been implemented at your site, however, consider first the need to collect clients'/patients' information about immigrant status, how to best explain why it is necessary to each client/patient, and identify who will be entitled to access that information. This approach can potentially decrease fear and threat immigrant clients and patients already experience.
- 5. Even when a client's/patient's legal immigration status is irrelevant to accessing services, it may be relevant to the client/patient.** Providers may elect not to ask about immigrant status as it is not required for program participation. Immigrant status may, however, still be relevant to addressing the needs of the client/patient. Thus, providers should still consider developing an approach to conversations that may serve to address specific fears and concerns and offer resources.