THE PRESENT & FUTURE OF PUBLIC CHARGE FOR IMMIGRANTS LIVING WITH HIV

AIDS United
National Immigration Law Center
Positive Women’s Network-USA

Monday, February 25, 2019
AGENDA

Welcome and Introductions
- Drew Gibson, AIDS United

Public Charge 101: Public Charge & People Living With HIV
- Jackie Vimo, National Immigration Law Center

Public Charge: Implications & Actions for the HIV community
- Naina Khanna, PWN-USA
Jackie Vimo is a policy analyst who oversees the Economic Justice Program at the National Immigration Law Center (NILC), a national organization that engages in policy analysis, litigation, education, and advocacy to defend and advance the rights and opportunities of low-income immigrants and their families.
Naina Khanna is the executive director of Positive Women's Network - USA (PWN-USA), a national organization that advocates for local, state, and federal policies and programs for women living with HIV.
“We have the tools available to end the HIV epidemic.” — Health and Human Services Secretary Alex Azar

“A person should be considered a public charge based on the receipt of financial support from the general public through government funding (i.e., public benefits).” — Department of Homeland Security

Will Immigrants living with and affected by HIV have access to those tools?

Can we end the HIV epidemic in the United States if the Trump administration’s proposed Public Charge rule is implemented?
Public Charge 101
Public Charge & People Living with HIV

February 25, 2019

Jackie Vimo, Policy Analyst

National Immigration Law Center
Questions we’ll address

• What’s the status of changes to public charge policy?
• What does current policy look like?
• What has already changed? What are the “FAM” changes?
• What would change under the draft proposed regulation?
• How should we talk about public charge?
• What can I do to help?
Status of the proposed changes

- **JAN 2018**: Changes to the Foreign Affairs Manual
- **OCT 2018**: DHS published the proposed rule.
- **DEC 2018**: Thousands of people submitted comments against the rule change.
- **NOW**: DHS must review and consider all comments.
- **TBD**: A final rule posted to the Federal Register.
- **60 DAYS**: A 60 day waiting period before the rule is in effect.
- **FINAL**: The rule is in effect.
What does current public charge policy look like?
Longstanding public charge test

Definition
A person who is considered “likely to become primarily dependent on the government for subsistence.”

Benefits Considered
Only two types of benefits considered:

1. **CASH**: Cash assistance for income maintenance
2. **LONG-TERM CARE**: Institutionalization for long-term care at government expense
Totality of Circumstances

- Age
- Health
- Family status
- Financial status
- Education and skills
- Affidavit of support

Current public charge test

The public charge assessment is forward looking

Is the person likely to rely on cash or long-term care in the future? No one factor alone (including past use of cash benefits) can determine whether or not someone is deemed a public charge. Positive factors can be weighed against negative factors.
A public charge assessment is made when a person:

- Applies to enter the U.S.
- Applies to adjust status to become a Lawful Permanent Resident (LPR) - obtaining a green card
- Applies to extend or change nonimmigrant status
- A green card holder leaves the U.S. for more than 180 consecutive days (6 months) and reenters
Public charge does **NOT** apply to everyone. Here are some examples of public charge does **NOT** apply to:

- Lawful Permanent Residents (Green card holders)
- Immigrants applying for citizenship
- Refugees and Asylees
- VAWA self-petitioners
- Survivors of Domestic Violence, Trafficking, or other Serious Crimes (Applicants/ recipients of U or T visa)
- Special Immigrant Juveniles
- Afghan, Iraqi interpreters
- Certain Parolees, and several other categories of non-citizens
Public charge changes in the Foreign Affairs Manual
Foreign Affairs Manual

Officials in U.S. consulates abroad use the Department of State’s Foreign Affairs Manual (FAM) to make decisions about whether to grant people permission to enter the U.S.
Foreign Affairs Manual Changes

  - Public charge definition did not change, but:
  - Affidavit of support no longer sufficient
  - SHIFT from applicant to → sponsor
  - Look to applicant’s age, health, family status, financial resources, skills. “Totality of Circumstances” test now considers:
    - Use of non-cash benefits
    - Benefits used by sponsors or family members

**NOTE**: These changes only affect decisions made by consular officials abroad
Foreign Affairs Manual Changes

● What is the impact so far?
  ○ Reports of denials or requests for additional evidence
  ○ More scrutiny of affidavits of support by joint sponsors
  ○ More questions about employment/income, family members with disabilities

● It is important to remember:
  ○ Forms have NOT changed
  ○ Consular officers still have discretion – practice varies
  ○ FAM could be revised again

● We are monitoring this – please let us know what you hear!
How would the public charge test change under the proposed regulation?
Changes in proposed regulation

- **NEW DEFINITION**: A dramatically different definition of public charge

- **TOTALITY OF CIRCUMSTANCES**: New weighted factors of the totality of circumstances test designed to make it harder for low and moderate income people to pass

- **ADDITIONAL BENEFITS**: Additional public benefits programs can be considered by immigration officials.
Definition of public charge

**CURRENT**
An immigrant “likely to become primarily dependent on the government for subsistence”

**PROPOSED**
An immigrant “who receives one or more public benefits”
Totality of Circumstances Factors

- Age
- Income and Financial Status
- Health
- Education and Skills
- Family Status
- Affidavit of Support
Totality of Circumstances: Age

Positive Factor

- Age 18 to 60

Negative Factor

- TOO OLD (Age 61 or Older)
- TOO YOUNG (Younger than 18)
Positivity Factor

- No health concerns

Negativity Factor

- Diagnosed with a medical condition
- Condition will interfere with ability to attend school or work

Totality of Circumstances: Health
Receipt of benefits by dependents (including U.S. citizen children) will not directly be a factor in applicant’s public charge test.

If a child or family member is an immigrant, his/her own use of benefits counts toward his/her own public charge determination.

Dependents are included in the calculation of household size and may make it harder for immigrants to meet the income test.
Imposes income test on immigrant - not only the immigrant’s sponsor.

The government can consider:
- Income of people in household
- Assets in cash or savings account
- Application for fee waiver
- Credit history or credit score
- Enrollment in private insurance or $ to pay for extensive medical treatment or institutionalization
Totality of Circumstances: Education/Skills

Positive Factor
- Fluent in English
- Degree and/or skills, certifications, licenses

Negative Factor
- No high school degree (or equivalent)
- Not proficient in English
CURRENT POLICY

Government looks to Affidavit of Support from sponsor and joint sponsor if an individual’s income is not 125% of FPL or above.

PROPOSED POLICY

Affidavit of support is a positive factor, but not heavily weighed.

Government will consider:

- Sponsor’s financial status
- Relationship to applicant and whether living together
- Likelihood sponsor would actually provide financial support

Totality of Circumstances: Affidavit of Support
Totality of Circumstances: Heavily Weighted Factors

Heavily Weighted Positive Factors:
- Individual or Household Income 250% of FPL or above

Heavily Weighted Negative Factors:
- Lack of job or job prospects
- Health condition w/o private insurance or $ to pay for care
- Receipt of public benefits
Public benefits included in NPRM

* Cash Support for Income Maintenance

* Long Term Institutional Care at Government Expense

** Most Medicaid Programs

Supplemental Nutrition Assistance Program (SNAP or Food Stamps)

Medicare Part D Low Income Subsidy

Housing Assistance (Public Housing or Section 8 Housing Vouchers and Rental Assistance)

* Included under current policy as well
** Exceptions for emergency medicaid & certain disability services offered in school. DHS is asking for input on inclusion of CHIP, but the program is not included in the regulatory text
Changes are not retroactive

If you receive any of the newly proposed additional benefits before the rule is final - the use of these benefits will not be considered in future public charge determinations.

Under the new proposal, DHS cannot judge:

- Public benefits received before the proposed rule is finalized
- Proposed program additions to the public charge test (previous slide BLUE)
- Any other benefits that are not cash or long term care (see next slide)

Remember* DHS current policy considers use of cash and long-term care. That element of the policy will remain the same (Previous slide ORANGE)
Public benefits **not included in the proposal**

Any benefit *not specifically listed* in the regulation will not be considered

- AIDS Drug Assistance Program (ADAP)
- Benefits received by immigrant’s family members
- Disaster relief
- Emergency medical assistance
- Entirely state local or tribal programs (other than cash assistance)
- CHIP* (*DHS requested input on inclusion of CHIP during the comment period in 2018, but CHIP was not included in regulatory text*)
- Women Infants and Children (WIC)
- School Breakfast and Lunch
- Energy Assistance (LIHEAP)
- Transportation vouchers or non cash transportation services
- Non-cash TANF benefits
- Federal Earned Income Tax Credit and Child Tax Credit
- Student Loans
Why this proposal is a radical change

DEFINITION CHANGE
This definition would change from someone who relies on government for main source of support to someone who participates in a health, nutrition or housing benefit to support work.

MORE FACTORS CONSIDERED
The totality of circumstances test has new detailed factors that make it harder for low and moderate income people to pass. Immigrants can fail the test if they are low-income, don’t speak English well, have a medical condition, etc.

ADDITIONAL BENEFITS
Additional benefits included in the test: Medicaid, SNAP, Housing assistance, Medicare Part D low-income subsidy
Who would the proposed regulation harm?
Direct and indirect impacts

- Directly impacted individuals
- Broader population of people in immigrant and mixed-status families are at risk of “chilling effect”
- States and localities
- Providers and communities
- All of us
Directly Impacted: Clara

Clara is afraid that her Medicaid receipt will cause a problem

- Clara is from Nicaragua
- She’s had TPS since 2001; the White House ordered an end to TPS for Nicaraguans, but a court injunction has kept the government from ending the program for now
- She’s living with HIV and is a Medicaid recipient in New York City
- Her husband wants to sponsor her for a green card
How the rule would impact Clara

Clara is afraid that Medicaid will cause a problem

Positive Factors

Negative Factors

Age

Income
The rule may deter legal immigrants and mixed-status families from using public benefits they are eligible to receive due to:

• Confusion over what benefits are covered
• The complexity of the rule’s structure
• Discretionary application of the rule

After 1996 eligibility changes, there was a 25% decrease in use of Medicaid by children of foreign-born residents, the majority of these children were still eligible.¹

In a 2018 survey at public health clinics in CA:²
• Two-thirds of health providers reported an increase in parents fear about enrolling kids in Medicaid, WIC
• Nearly half of providers reported an increase in no shows at public health clinics.

The Chilling Effect: The Big Picture

As many as **26 million** people in families with immigrants might be chilled from participating in programs that make their families healthier and stronger.¹

1 in 4 children have an immigrant parent²

¹“Public Charge Proposed Rule: Implications for Non-Citizens and Citizen Family Members Data Dashboard,” Manatt Health, October 2018
²Samantha Artiga and Anthony Damico “Nearly 20 Million Children Live in Immigrant Families that Could Be Affected by Evolving Immigration Policies” Kaiser Family Foundation, 2018
The Chilling Effect: The Big Picture

Impacts by Race and Ethnicity:

- **18.3 million LATINOS**
  > 33.4% of all LATINOS

- **3.2 million ASIAN**
  > 17.4% of all ASIAN

- **1.8 million BLACK & AFRICAN**
  > 4% of all BLACK & AFRICAN

- **2.5 million WHITES**
  > 1% of all WHITES

Source: “Public Charge Proposed Rule: Implications for Non-Citizens and Citizen Family Members Data Dashboard,” Manatt Health, October 2018
Keep in Mind

- The existing 1999 public charge guidance is still in place until a new rule is finalized.
- The final regulation could look different from the proposed regulation.
- The proposed regulation may never be finalized.
How should we talk about this issue?
What is it really about?
Messaging Toplines

● **Hurts children, families, communities, our health, our future**
  ○ No way to hurt parents without hurting children
  ○ We are all healthier and stronger when families are healthy and strong

● **An America only for the rich**
  ○ Wealthy-only policy
  ○ Green cards to the highest bidder

● **A new family separation policy**
  ○ We value families, and families should be able to stay together

● **Radical change through the back-door** of our family-based immigration system
  ○ Presidential overreach and end-run around Congress

● **Continues ugly history of discrimination against immigrants**
  ○ We’ve seen abuses like this before in our history — whether it was turning away Jews fleeing the Holocaust, excluding Chinese and Asian immigrants, or discriminating against Catholics from Ireland and Italy.
How can you talk to immigrant families about this?
Public Charge: Top 5 Things to Know

1. The public charge rules in the US have not yet changed

2. The proposed regulation would not consider any newly listed benefits before it is final

3. The regulation does not apply to all immigrants

4. The privacy of your personal information is protected by law

5. You are not alone, and you can fight back!

For more information on talking with immigrant families about public charge, check out this FACT SHEET
What can I do to get involved?
Priority # 1
Combat and document the chilling effect of Trump’s anti-immigrant agenda, and empower immigrants and their families to make informed and accurate decisions

Priority # 2
Block, delay (and mitigate) the impact of proposed public charge changes and other related harmful policies from taking effect

Priority # 3
Build power and support for an affirmative vision forward
Public comment period ended

DHS must review and consider all comments.

A final rule posted to the Federal Register.

A 60 day waiting period before the rule is in effect.

The rule is in effect

This process could take months to complete
3 Different Ways to Stay Engaged

**Full Email List**
- Open to all allies
- Share information, new materials and learning opportunities

**Active Members**
- Organizations are invited to join as official Active Members
- We have 5 working groups and 5 subcommittees
- To join go to: [http://bit.ly/PIFAActiveMember](http://bit.ly/PIFAActiveMember)

**PIF Website**
- Public-facing information about the campaign and how to get involved
- Advocacy and community-facing materials
- [Protectingimmigrantfamilies.org](http://Protectingimmigrantfamilies.org)
Questions?

vimo@nilc.org
Public Charge: Implications & Actions for the HIV community

AIDS United webinar February 25, 2019
THE MYTH OF THE UNDESERVING POOR

NO HUMAN BEING IS 'ILLEGAL!'

HEALTH CARE FOR ALL INCLUDES IMMIGRANTS

ONE AMERICA With Justice for All
Higher percentages of female and transgender Ryan White clients are living below poverty than male clients, 72.1% of cisgender women, 77.3% of transgender women, 65.5% of transgender men, were living at or below 100% FPL. Comparatively, 58.9% of cisgender males – Ryan White Client-Level Data report, 2017. Available at https://hab.hrsa.gov/sites/default/files/hab/data/datereports/RWHAP-annual-client-level-data-report-2017.pdf

Figure 1. Household income and Number of Dependents in Household

Securing the Future of Women-Centered Care, Positive Women’s Network-USA, 2016 N = 180 WLHIV
Factors for Public Charge as defined in the 10/10/2018 proposed rule change for immigrant families applying for green card or change in visa status.

Individuals applying for CITIZENSHIP are not subject to this test.

Stand Up Against #PublicCharge
Learn more at: www.UndocuBlack.org/PublicCharge
PLHIV and programs targeted under public charge rule changes

- a PWN member survey conducted in May 2017 found that 42% of our members utilize SNAP/EBT (N=260 WLHIV)

- Medicaid is the SINGLE LARGEST payer of healthcare coverage for PLHIV, estimated to cover more than 40% of PLHIV in care. PWN survey showed that 44% of our members rely on Medicaid (May 2017, N=260)
The rule specifically targets immigrants with pre-existing conditions.

- Heavily weighted negative factors related to health and health coverage include:
  - Having a medical condition that is “likely to require extensive treatment or institutionalization”
  - Being uninsured, lacking the financial resources to pay for the medical costs associated with the condition.

- **This is no accident.** The DHS preamble to the proposed rule changes directly recognizes that disenrollment or foregone enrollment in public benefit programs could lead to worse health outcomes, especially for pregnant or breastfeeding women, infants, or children; reduced prescription adherence; increased emergency room use and emergent care due to delayed treatment; increased prevalence of diseases; increased uncompensated care; increased rates of poverty and housing instability; and reduced productivity and educational attainment.
Also could impact access to private coverage

- In determining whether someone is a public charge, DHS is proposing to consider whether someone has *applied for* a public benefit, even if they never actually enroll.

- Many immigrants, including lawfully present immigrants, work in industries that do not offer health benefits to their employees, such as retail, hospitality, and agriculture.

- Currently, some state-based marketplaces, in an effort to streamline enrollment for consumers, automatically generate a Medicaid application when someone applies for marketplace coverage. Once the person is deemed ineligible for Medicaid, the marketplace then determines their eligibility for the ACA’s premium tax credits. **Under the proposed rule, the marketplace’s submission of a Medicaid application, even if the applicant never enrolls, could put their green card application at risk.**

- This could create fear of potential consequences for immigrants enrolling in marketplace coverage.
Newly Proposed 'Public Charge' Rule Could Be Devastating to HIV-Positive Immigrants

By Amanda Lugg
From TheBody
May 16, 2018

Just when you thought it couldn't get much worse for immigrants, it could get much worse for immigrants.

In late 2017, the Trump administration announced its intention to impose harsher rules for determining when immigrants are considered a "public charge" -- a legal determination that can block an individual's path to permanent residency (i.e., obtaining a green card).

Under U.S. immigration law, a person seeking a green card through a family relationship must show that they "are not likely to become a public charge," which under current law is someone who is unable to support themselves and thus likely to depend on government benefits for income. Historically, the Department of Homeland Security (DHS) has only excluded applicants based on continuous receipt of cash benefits or long-term institutionalization at government expense, so as not to "inhibit access to non-cash benefits that serve important public interests."
Bad for individual health and public health

- The emphasis on medical conditions in the proposed public charge rule changes creates almost a “pre-existing condition” exclusion for non-citizens who might later seek to adjust status.
- An immigrant with a serious medical condition will have to overcome extreme hurdles in order to not be deemed a potential “public charge”, especially if they do not have private insurance.
- This is a direct incentive to avoid medical examinations, such as HIV screening, to avoid discovery of a potential health problem.
So what do we know about what’s already happening?
“it is thought that nearly 150,000 fewer individuals currently access Medicaid in Texas in part due to the leaked rule. Another Medicaid health plan in California -along with many of its contracted providers - has already received calls from Medicaid enrollees expressing their fear of being considered a public charge and requesting information on how to disenroll from the program. – Association of Community Affiliated Plans, Feb 2019

Through Covered California, consumers who preferred to speak a language other than English experienced a larger drop during open enrollment for 2019 than other groups did. Covered California’s analysis found a substantial differential impact among some populations where English is not the preferred spoken language. In particular, the number of Mandarin speakers dropped 28 percent, Spanish speakers dropped 29 percent and Korean speakers dropped 46 percent. By comparison, the number of English speakers dropped 22 percent. - https://hbex.coveredca.com/data-research/library/CoveredCA_2019_Open_Enrollment_Early_Analysis.pdf

Fearing deportation, immigrants forgo medical care

By BRIANNA EHLEY, VICTORIA COLLIVER and RENUKA RAYASAM | 07/17/2017 04:16 PM EDT

Medical centers are supposed to be safe zones from immigration officers, and so far, there haven’t been reports of ICE raids at hospitals or clinics. | Getty | Getty
Researchers found that in 2017, 43 percent of eligible immigrant families who had been in the US for less than five years were participating in SNAP. By mid-2018, participation among these families dropped to 34.8 percent, a decline that researchers attributed to fears of potential repercussions for receiving food assistance since eligibility rules remained unchanged from 2017 to 2018.
“Even clients that I am now giving them their work permits or their green cards and they are eligible for public benefits, they’re very hesitant to get anything.” Legal Services Provider, CA
Chilling effects

- Although the proposed changes haven’t gone into effect yet, we are already seeing an impact.
- Fear, uncertainty, and confusion are a deterrent to enrollment in programs
- This places entire families at risk. More than 14 million Medicaid and CHIP enrollees live in a household with a noncitizen, and half of these individuals are U.S. citizen children. They are all at risk.
- Nearly 20 million children, or one in four, live with an immigrant parent, and nearly 90 percent of these children are citizens.
- Lots of anecdotal data on withdrawals from WIC, SNAP, Medicaid.
- This is likely to contribute to worse health outcomes for immigrants living with HIV, their families, and to create challenges in achieving HIV-related public health goals.
President Donald Trump’s administration has had an at times fraught relationship with the HIV/AIDS community.

**STATE OF THE UNION 2019**

**Trump’s State of the Union pledge:**

**Ending HIV transmissions by 2030**

Under the president’s 10-year strategy, health officials would target the U.S. communities with the most HIV infections.
What can we do?
Accurate messaging and information matters

• The rules have not yet changed
• DHS’s proposed rule would not be retroactive, meaning that health services used before any rule change would NOT count against immigrants seeking to adjust their status.

• Receipt of benefits by the individual, not family members, would be considered.

• Get the facts at https://protectingimmigrantfamilies.org/

• Counter anti-immigrant rhetoric. Almost 20% of US citizens rely on these programs.

• This is part of a larger political and rhetorical effort to vilify immigrants and paint them as a burden or problem to our society.
Support sanctuary policies

SB54, California Values Act
• passed in 2018
• Limits collaboration between local law enforcement and the Dept of Homeland Security
• Protects against immigration enforcement in sensitive locations such as schools, healthcare facilities, courthouses

Support Protecting Sensitive Locations Act: H.R. 1011 (Espaillat NY-13). Prohibits immigration enforcement in certain “sensitive locations” such as courthouses, schools, community centers and houses of worship. Will also be introduced on the Senate side.

Also:
• Laws protecting health information privacy
• Presumptive eligibility programs that don’t verify info against federal databases
• Policies that prohibit state Medicaid programs from retaining citizenship or immigration information
Recommended actions for healthcare facilities

- have written policies and procedures for gathering and handling confidential patient information
- limit collection of information about immigration status, citizenship status, and national origin to information that the facilities are required by law to collect.
  - If a health provider must collect such information for a patient, the provider should avoid including that information in the patient’s medical and billing records.
  - Healthcare facilities should collect such information for only the person seeking care, not his or her family members.
- respond promptly to requests by patients (or their parents, guardians, or caretakers, as appropriate) to remove immigration status information from their medical records, as permitted by law.
- educate patients about their privacy rights and reassure them about which healthcare information is protected by federal and state laws.
- amend standard notices of privacy practices to clarify that information about immigration status is protected by privacy laws.
- make information accessible to individuals with limited English proficiency, in the languages commonly spoken in the community.
Oppose other related attacks on immigrant access to the safety net

• NPRM: Social Security Administration (SSA) released Feb 1.
  — would eliminate “inability to communicate in English” as an education category evaluated under disability claims under titles II and XVI of the Social Security Act.

• SSA is trying to make it easier to deny assistance to non-English speakers.
• Estimated that 10,500 would have applications rejected
• This proposal targets documented immigrants and US-born citizens.
• Comments are due April 2, 2019
More resources and reading

- Protecting Immigrant Families: https://protectingimmigrantfamilies.org/
- Urban Institute: https://www.urban.org/research-area/immigrants-and-immigration
- National Immigration Law Center: https://www.nilc.org/
Thank you

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QUESTIONS?