

# AIDS Drug Assistance Program Answers to Frequently Asked Questions on the 2019 U.S. Citizenship and Immigration Services' Final Public Charge Rule

*On August 15, 2019, the United States (U.S.) Department of Homeland Security (DHS) published a final rule related to public charge that may raise concerns for people living with HIV who are not U.S. citizens. The California Department of Public Health developed these Answers to Frequently Asked Questions to assist AIDS Drug Assistance Program (ADAP) clients and enrollment workers with concerns related to these changes.*

## 1. What is a “public charge”?

Public charge refers to an evaluation (“test”) of an immigrant to determine if they will be dependent on the government for support. Recently, the federal government changed its rules on how to evaluate whether a person is considered a public charge.

Beginning October 15, 2019, anyone who has applied for, has been approved for, or has received one or more public benefits for more than a total of 12 months within any 36-month period could be considered a public charge. For instance, receipt of two benefits in one month counts as two months; receiving two benefits for 6 months could mean a person is considered a “public charge.” However, because the public charge test tries to predict future actions, accepting public benefits for any duration (and amount) may be considered in the evaluation.

However, an assessment of public charge is not automatic based on number of benefits used. The immigration officer must review the “totality of the circumstances” to determine if someone is likely to depend on public aid in the future, which includes age, health, family status, assets, resources, financial status, education and skills. The new rule identifies a number of positive or negative factors that may be considered. Positive factors include having a job or health insurance, whereas negative factors include using certain benefits or having a health condition.

## 2. When does the public charge test apply?

The test applies in two situations: (1) when a person applies to enter the U.S. or (2) when a person applies to adjust their immigration status, such as when seeking a

### KEY CONSIDERATIONS FOR ADAP CLIENTS

You may not be evaluated under the public charge rule depending on your immigration status.

Even if you might be evaluated for public charge, ADAP and Ryan White programs are not included in the list of programs to be considered.

Being HIV+ does not mean that you will be denied admission to the U.S. HIV is not tested for during the required medical exam at the time of adjusting your status.

You can still use subsidies to purchase and maintain your Affordable Care Act insurance.

If you are under 21 or pregnant, you can use federal Medicaid without being subject to the public charge test.

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green card. Immigration law is complex; if you do not know your immigration status, you should seek legal advice.

### **3. To whom does the public charge test apply?**

The public charge test applies to most, but not all, who seek lawful immigration status in the U.S.

Some persons are **not** subject to the public charge test, including naturalized citizens, active green card holders (with restrictions – seek legal advice if you need to leave the U.S. for more than 180 days), refugees, asylum-seekers, persons applying for a green card under the Violence Against Women Act, persons seeking U or T visas, or children seeking Special Immigrant Juvenile status.

### **4. Which benefits are subject to public charge consideration?**

Currently, application for, approval of, or use of the following programs will be considered when performing the public charge test:

- Federal assistance programs, including:
  - Temporary Assistance for Needy Families, called CalWORKs in California
  - Supplemental Security Income
  - General Assistance or other local cash assistance programs
- Long-term institutional care paid by the government (i.e., intermediate care facilities, nursing homes, inpatient psychiatric services, or services for individuals age 65 or older in an institution for mental afflictions).
- Non-emergency Federal Medicaid, except for those who are under 21 or pregnant
- Section 8 Housing Assistance under the Housing Choice Voucher Program
- Subsidized public housing
- Supplemental Nutrition Assistance Program, called CalFresh in California

### **5. Is ADAP included in the list of programs considered as part of the public charge test?**

No. The use of state, local, and tribal funded non-cash programs and Ryan White programs including ADAP are not included in the rule and do not count towards someone being determined to be a public charge.

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## **6. Which benefits are not subject to the public charge test?**

Non-cash benefits and special-purpose cash benefits that are not intended for income maintenance are not subject to public charge consideration. Such benefits include:

- Subsidies for Affordable Care Act health insurance (aka Obamacare)
- Immunizations
- Testing and treatment of symptoms of communicable diseases
- Short-term rehabilitation services
- Prenatal care
- Children's Health Insurance Program under Medi-Cal
- Emergency medical assistance received through Medi-Cal
- Benefits used by other family members
- Non-cash benefits received through CalWorks such as subsidized child care or transit subsidies
- Cash payments that have been earned, such as Title II Social Security benefits, government pensions, and veterans' benefits
- Unemployment compensation
- Benefits received by or applied for on behalf of other family members
- Benefits received by active duty or reserve service members and their families
- Benefits received by foreign-born children of U.S. citizen parents who are automatically eligible to become citizens
- Benefits funded entirely by the State of California\*

## **7. How does the federal charge rule impact Californians' access to health care benefits?**

Undocumented persons, including Deferred Action for Childhood Arrivals (DACA) recipients, do not qualify for a health plan or financial assistance through Covered California; however, they may qualify for coverage through State-funded Medicaid or through some individual counties' Social Services programs.

In California, Medicaid is known as Medi-Cal. For individuals age 25 years or younger, full-scope Medi-Cal benefits are available that are entirely State funded\* and thus not subject to the federal public charge rule.

*\* If you are not certain if the benefit you are applying for or receiving is entirely State-funded, contact the Program that administers the benefit or seek legal advice.*

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For undocumented individuals over age 25, including those who are age 65 and older, Medi-Cal provides "limited scope" benefits. Limited scope services are long-term care, pregnancy-related benefits, and emergency services. Medi-Cal also provides coverage for individuals needing breast and cervical cancer treatment, family planning services through Family PACT, and through temporary presumptive eligibility programs.

### **8. When do these changes go into effect?**

Changes to the public charge rule were scheduled to be effective October 15, 2019. Prior to implementation, multiple federal judges across the U.S. issued temporary injunctions ordering that DHS could not implement the final rule. The court orders also postpone the effective date of the final rule until there is final resolution in the cases.

Current information on legal actions related to the Final Public Charge Rule can be found on the DHS U.S. Citizenship and Immigration Services website, at [www.uscis.gov/greencard/public-charge](http://www.uscis.gov/greencard/public-charge).

### **Further resources to assist you:**

- National Immigration Law Center, at [www.nilc.org/issues/economic-support/pubcharge](http://www.nilc.org/issues/economic-support/pubcharge)
- Immigrant Legal Resource Center, at [www.ilrc.org/public-charge](http://www.ilrc.org/public-charge)
- California Department of Social Services Legal Resources, at [www.cdss.ca.gov/Benefits-Services/More-Services/Immigration-Services/Immigration-Services-Contractors/Public-Charge-Contact-List](http://www.cdss.ca.gov/Benefits-Services/More-Services/Immigration-Services/Immigration-Services-Contractors/Public-Charge-Contact-List)
- Covered California, at <https://www.coveredca.com/individuals-and-families/getting-covered/immigrants/>
- The California Immigrant Welcome Guide, at <http://immigrantguide.ca.gov/>

### **Please Note**

This information is provided as a general summary. One should consult an attorney for questions regarding a specific case under the new Federal Regulations.