

CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY



MARCH 15, 2020
ALL COUNTY LETTER 21-32

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY HEALTH SERVICES DIRECTORS
ALL COUNTY PUBLIC HEALTH OFFICERS

FROM: Kim Johnson
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SUBJECT: FEDERAL PUBLIC CHARGE RULE

The U.S. Department of Homeland Security (DHS) has announced that it does not plan to enforce the Inadmissibility on Public Charge Grounds Final Rule, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (2019 Public Charge Final Rule). Therefore, the [1999 interim field guidance](#) on the public charge inadmissibility provision (i.e., the policy that was in place before the 2019 Public Charge Final Rule) will apply.

For context, on November 2, 2020, the U.S. District Court for the Northern District of Illinois vacated the 2019 Public Charge Final Rule nationwide. That decision was stayed by the U.S. Court of Appeals for the Seventh Circuit. On March 9, 2021, the Seventh Circuit lifted its stay, allowing the U.S. District Court for the Northern District of Illinois' order vacating the 2019 Public Charge Final Rule to go into effect. As a result, the 2019 Public Charge Final Rule is vacated nationwide.

Under the 1999 interim field guidance, DHS and the U.S. Citizenship and Immigration Services (USCIS) will not consider a person's receipt of Medi-Cal (except for long-

term care), public housing, or CalFresh, as part of the public charge inadmissibility determination. Instead, a “public charge” is defined as a non-citizen who is likely to become “primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense.”

Cash assistance for income maintenance includes the CalWORKs cash grant, Supplemental Security Income (SSI), Cash Assistance Program for Immigrants (CAPI), and general assistance/general relief payments. However, not all cash benefits are considered to be “for income maintenance” and the receipt of benefits alone will not lead to an automatic determination that the individual is likely to become a public charge. Receipt of these benefits is just one factor among several considered as part of a “totality of the circumstances” test. Note that receipt of benefits by family or household members is not considered. Additionally, the public charge determination is only applied in limited circumstances, so it is important that individuals with questions seek guidance from qualified legal experts prior to declining necessary aid.

In addition, DHS has clarified that medical testing, treatment and preventive services for COVID-19, including vaccines, are not considered for public charge purposes. On February 1, 2021, DHS issued a [statement](#) reinforcing that U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) will **not** conduct enforcement operations at or near vaccine distribution sites or clinics. Additionally, ICE does not and will not carry out enforcement operations at or near health care facilities, such as hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities, except in the most extraordinary of circumstances.

The California Health and Human Services (CHHS) Agency, along with the California Departments of Social Services, Health Care Services, and Public Health, developed [a consumer guide](#). It is intended to: (1) provide a high-level explanation of the federal changes and (2) direct individuals who may have questions to state funded legal services providers.

County staff, including but not limited to eligibility workers, can share official (i.e., guidance and materials issued by the State of California or the Federal Government) handouts and other written materials about public charge with new applicants or continuing clients, but should **not** provide legal advice about the immigration consequences of receiving public benefits.

There are many factors that affect whether a person may be considered a public charge. Every person's case is unique and requires review by a qualified legal professional. State-funded organizations that can provide legal services to immigrants are listed on the [Public Charge Provider List](#). County staff may provide this contact information to new applicants or continuing clients.

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