



Public Charge

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Public Charge Overview

Public Charge Overview

Public charge is a term used in immigration law to describe someone who is, or is likely to become, primarily dependent on government assistance.

The Department of Homeland Security (DHS) has released its final rule around the public charge test, which expands the scope of public benefits considered in a public charge determination.

- Washington Apple Health is the brand name for all medical assistance programs, including “Medicaid”.

Public Charge Effective Date

The final rule will take effect on February 24, 2020 barring any legal actions that may delay or defer implementation.

The rule redefines the term public charge and broadens the factors used to assess whether someone is likely to become a public charge.

The final rule will apply to applications for adjustment of status postmarked on or **February 24, 2020**. The changes will not count against individuals who received the newly included benefits before the effective date.

Public Charge Changes

The following benefits are and have always been subject to the public charge test:

- Medicaid funded nursing facility or long-term care services
- Temporary Assistance for Needy Families (TANF); Supplemental Security Income (SSI); any federal, state, local or tribal cash assistance for income maintenance

The change in rule allows Medicaid, SNAP, and housing to be considered in the determination of public charge.

The following information will focus on Medicaid in the determination of public charge.

Public Charge Changes

The final rule changes how immigration officials determine whether certain immigrants will become a public charge.

Individuals potentially affected by the rule are advised to seek independent legal counsel; Health Care Authority and other Washington State agencies are not able to provide an in-depth level of analysis or assistance.

Exemptions and Exclusions

Individual Exemptions

The following individuals are exempt from the public charge test:

- Refugees and Asylees
- Amerasians
- Afghan and Iraqi Special Immigrants
- Cuban/Haitian Entrants
- Humanitarian parolees
- Victims of human trafficking (T-Visa), victims of criminal activity (U-Visa), Special Immigrant Juveniles, or VAWA (Violence Against Women Act) self-petitioners

Excluded Individuals

The public charge test does not apply to:

- Naturalized US Citizens
- US Nationals
- Lawfully Present Residents (LPR) (Green card holders) unless they leave the US for more than 6 continuous months and seek to re-enter.

Apple Health Exemptions

In addition to the exempted immigration statutes, the public charge test does not apply to the following:

- Medicaid benefits received for Alien Emergency Medical (AEM);
- Medicaid benefits received by immigrants under age 21, including CHIP;
- Medicaid benefits received by pregnant women, including 60 days postpartum;
- State funded Apple Health programs

Public Charge Test

Public Charge Test

Not all immigrants are subject to the public charge test.

The test is used for:

- Applicants for admission to the United States
- Applicants for lawful permanent residency (green cards)
- Green card holders who have left the U.S. for more than six continuous months and seek to re-enter.
- Applicants applying for an extension of stay
- Applicants applying for a change of status

Public charge does not apply to individuals applying for U.S. citizenship or naturalization.

Public Charge Test

The public charge test does not include the use of Medicaid benefits by family members.

The use of Medicaid benefits by children or other household members will not be counted against an individual applying for lawful permanent residency or admission to the United States.

If individuals have questions about how receiving public benefits will affect their immigration status, please refer them to an immigration attorney.

Public Charge Test

Public charge is defined as receipt of one or more benefits during a set period defined as more than 12 consecutive months within a 36-month period.

Receiving two or more benefits in one month will count as two months or more of benefit use. For example:

Received in one
month

January:

1. Medicaid
2. SNAP



Counts as two
months of benefit use

2 Months

Totality of Circumstances

Immigration officials must look at the totality of the circumstances, when deciding whether an applicant is likely to be a public charge.

Many factors including age, health, family status, and the length of time the individual received the benefit must be considered to determine whether a person is considered a public charge.

Receipt of a public benefit alone does not automatically make an individual a public charge.

Scenarios

Scenarios

Scenario one

Megan is currently receiving Apple Health, is a lawful permanent resident (LPR or green card holder) and will soon apply for citizenship.

Is Megan subject to the public charge test?

No, she is already a green card holder; the rule does not apply to lawful permanent residents who are applying for U.S. citizenship.

Scenarios

Scenario two

James entered the U.S. with a fiancé visa and submitted an application in Washington Healthplanfinder. His immigration status is not federally verified and he is approved Apple Health for Adults for a Reasonable Opportunity Period (ROP).

Is James subject to the public charge test?

Yes, James will be subject to the public charge test because he is on the path to a green card. In addition, he does not have an exempt status or he was not enrolled in an exempt program.

Scenarios

Scenario three

Mark is not lawfully present and needs dialysis. He submits an application in Washington Healthplanfinder for Alien Emergency Medical (AEM). After his case is processed, he is approved for AEM.

Is Mark subject to the public charge test?

No, Mark is not subject to the public charge test because he is not lawfully present. Additionally, he is approved for an exempt program.

Scenarios

Scenario four

Kevin is a hospital navigator assisting Joe who states he has a visa and is concerned about the public charge rule.

Joe asks Kevin questions on how being on Apple Health or Qualified Health Plan (QHP) will affect his immigration status because of the public charge rule.

Is Joe subject to the public charge test?

It is unclear if Joe is subject to the Public Charge test. Kevin should refer Joe to an immigration attorney to discuss how receiving public benefits could affect his immigration status.

Since Kevin did not receive Joe's explicit consent to apply for benefits, Kevin should not create a Washington Healthplanfinder application.

Scenarios

Scenario five

Karen is on a diversity visa and submits her green card application. Her child John, a U.S. citizen, is on Apple Health.

Is Karen subject to the public charge test?

Yes, however, she is not applying for or receiving any programs that are subject to the Public Charge test.

Under the final rule, the public charge test does not count the use of benefits by John against Karen's application for a green card. It only considers the applicant's own use of assistance.

Scenarios

Scenario six

Missy and her children, Ashley age 14 and Josh age 7, are lawfully present. Missy receives Apple Health for Kids for her two children. She is concerned about the new public charge rule and contacts a navigator to see if she should terminate her children's Apple Health coverage.

Are the children subject to the public charge test?

No, they are under age 21 so they are not subject to the public charge test. The navigator should refer Missy to an immigration attorney in case she has any other questions.

Scenarios

Scenario seven

Dean is not lawfully present and living with his pregnant wife, Polly, and their child, Agnes. None of them have health care. Dean was admitted to the hospital with a broken leg. Kevin, the navigator is assisting Dean with his application for AEM inquires about health care coverage for the rest of his family.

Is the family subject to the public charge test?

No, they are not lawfully present so they are not subject to the public charge test. In addition, AEM, Apple Health for Kids and Apple Health for Pregnant Women are all exempt programs. Kevin submits the application for AEM for Dean, Polly is approved for Apple Health for Pregnant Women and Agnes is approved for Apple Health for Kids.

Scenarios

Scenario eight

Jane entered the U.S. on a student visa and plans to remain in Washington State after she completes her degree. She is pregnant and Kevin, the navigator helps her apply for Apple Health. Jane inquires about how receiving Apple Health might affect her application for a change of status.

Is Jane subject to the public charge test?

Yes. Jane is subject to the public charge test, however; she is approved for Apple Health for Pregnant Women which is an exempt program.

Additionally, Kevin refers Jane to an immigration attorney since she will be applying for a change of status in the future.

Key Takeaways

Key Takeaways

HCA and other state agency staff cannot provide advice. If individuals you are helping apply for Medicaid have questions or concerns about their immigration status and the public charge rule, refer them to an immigration attorney.

As always, do not attempt to predict eligibility outcomes. There should be no changes to how an application is submitted.

Make sure to enter the information exactly as provided and that you have received consent from the applicant.

Resources

Resources

Individuals potentially affected by the rule are advised to seek independent legal counsel. They may contact one of the following organizations for help:

- CLEAR Hotline: 1-888-201-1014
- Northwest Immigrant Rights Project (NWIRP):
 - Seattle Office: 206-587-4009
 - Yakima Valley (Granger) Office: 509-854-2100
 - Wenatchee Office: 509-570-0054

Resources

- **Final Rule (full text)**
[federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds](https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds)
- **Protecting Immigrant Families campaign**
<https://protectingimmigrantfamilies.org/>
- **Immigration and Refugee Resources**
governor.wa.gov/issues/issues/safe-communities/immigration-and-refugee-resources
- **HCA Stakeholder Training and Education Webpage**
hca.wa.gov/health-care-services-supports/apple-health-medicaid-coverage/stakeholder-training-and-education