

The Proposed Public Charge Rule: An Overview and Implications in Massachusetts

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THE PUBLIC CHARGE RULE – INTRODUCTION AND PROPOSED CHANGES

On October 10, 2018, the Department of Homeland Security (DHS) proposed a rule to change the process by which it determines whether an immigrant is inadmissible to the United States or unable to adjust status because the person is likely to become a public charge.¹ Under current law, the public charge determination arises when a noncitizen applies to immigrate to the United States, seeks admission at a port of entry, or attempts to adjust his or her status to become a lawful permanent resident (i.e., obtain a “green card”).² Some types of noncitizens, including refugees³ and certain victims of human trafficking,⁴ are not subject to a public charge determination.

The term “public charge” is not defined in statute; the current definition originates in field guidance issued in 1999.⁵ Under that definition, a person is a public charge if the person is likely to become “primarily dependent on the government for subsistence,” as demonstrated by: (i) the receipt of public cash assistance for income maintenance; or (ii) institutionalization for long-term care at government expense.⁶ Public cash assistance includes Supplemental Security Income (SSI), cash assistance from the Temporary Assistance for Needy Families (TANF) program, and state and local cash assistance programs.⁷ It does not include non-cash assistance such as Medicaid or Supplemental Nutrition Assistance Program (SNAP, formerly called “Food Stamps”) benefits. Meeting these criteria may result in a person being deemed inadmissible but it is not dispositive; each determination is made after considering the “totality of the circumstances.” That consideration also includes statutory factors to be considered “at a minimum,” as well as any affidavit of support.⁸

The proposed Public Charge Rule would mark a significant shift from current policy by defining a “public charge” as a noncitizen who receives one or more public benefits.⁹ Cash assistance programs will still be considered as before.¹⁰ The proposed rule would additionally consider non-cash benefits, including SNAP and Section 8 housing programs, and non-monetizable benefits, including non-emergency Medicaid benefits, any long-term institutional care benefit that is provided at government expense, Medicare Part D subsidies, and subsidized housing.¹¹

The proposed rule will still require a totality of the circumstances determination of whether an immigrant is likely to become a public charge, but the proposed rule marks a significant change from the status quo. In addition to expanding the public benefit programs to be considered, the proposed rule would codify elements of the totality of the circumstances test based on factors in the public charge statute—age; health; family status; assets, resources, and financial status; and education and skills—and continue to allow consideration of any affidavit of support.¹² The codification of these factors establishes standards to be met and provides examples of positive and negative factors for DHS personnel to use when determining whether a person is likely to become a public charge. This could yield a wide range of results among different noncitizens with similar circumstances, as individual DHS employees could weigh the same factors differently, raising the prospect of more arbitrary immigration decisions.

In addition, the increased emphasis on age, health, and other factors has the potential to make vulnerable populations, including people with disabilities, children, and the elderly, more likely to be found inadmissible.¹³ It is likely that more low-income immigrants will also be found inadmissible, as the proposed rule establishes an annual income of below 125 percent of the Federal Poverty Level (FPL) as a negative factor¹⁴ (\$15,175 for

an individual and \$31,375 for a family of four in 2018).¹⁵ Previous public benefits use will also be a negative factor.¹⁶ See the Appendix for a chart detailing the factors considered under the totality of the circumstances determination.

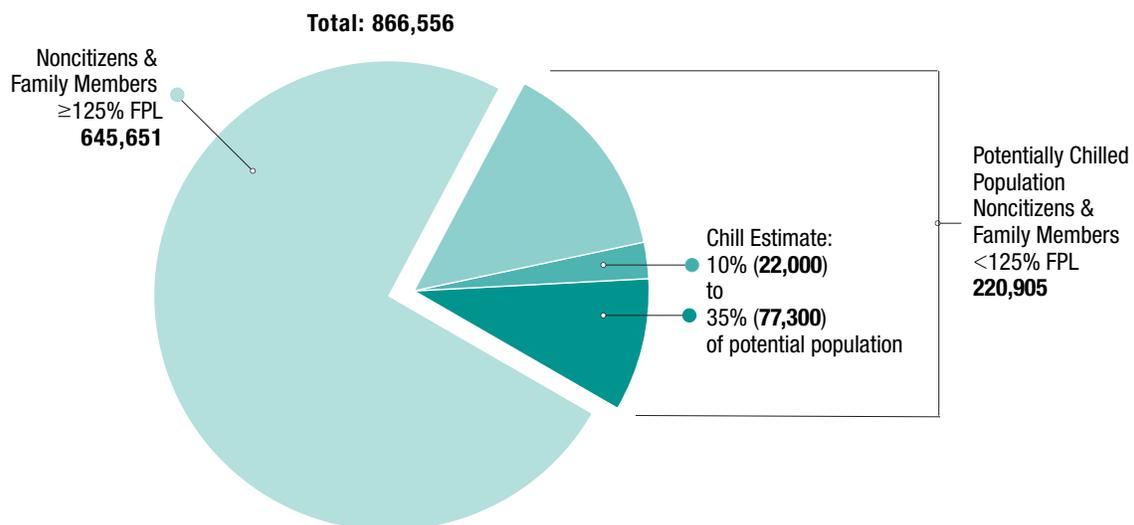
CHILLING EFFECT – THE IMPACT OF THE NEW PUBLIC CHARGE RULE ON IMMIGRANTS IN MASSACHUSETTS

The proposed Public Charge Rule has the potential to affect a significant number of the Commonwealth’s residents who are noncitizens and family members of noncitizens, including citizen children. The rule will both expand the number of noncitizens who are subject to the rule’s scope and likely dissuade some residents, both citizen and noncitizen, from using public benefits for which they are eligible. This second impact is referred to as a “chilling effect.”

A chilling effect has been observed in immigration policy before; in the mid-1990s, when Congress passed welfare reform that included limitations on access to public benefits by immigrants, there was a decline in participation in public benefits among immigrants who remained eligible for them and eligible family members.¹⁷ A decline in participation in public benefits despite eligibility has also been observed in communities in fear of deportation¹⁸ and as a result of the current debate around immigration, including as responses to a draft version of the proposed Public Charge Rule leaked to the public earlier this year.¹⁹

To illustrate who may be subject to the chilling effect in Massachusetts generally, this issue brief uses a Manatt Health estimate of all noncitizens and their family members who are below 125 percent FPL as a potentially chilled population, as these people may be more likely to take advantage of public benefits in the first place.²⁰ It is difficult to determine in advance how many people in this population will actually disenroll from or refrain

FIGURE 1: MASSACHUSETTS RESIDENTS WHO ARE NONCITIZENS AND FAMILY MEMBERS OF NONCITIZENS



Source: Manatt Health.

from participating in a public benefit. Based on previous and currently observed behavior, this brief estimates a chilling effect resulting in 10 percent to 35 percent of the potentially chilled population actually changing their behavior out of fear.²¹

There are approximately 507,234 noncitizens and 359,322 citizen family members of noncitizens in Massachusetts today, constituting approximately 7.5 percent and 5.3 percent of the Commonwealth's population, respectively. Among them, approximately 220,905 noncitizens and family members are below 125 percent FPL and may face a chilling effect from the proposed Public Charge Rule. The potential result is a range of 22,000 to more than 77,300 people who could be dissuaded from participating in a public benefit. (Figure 1).

MEANS-TESTED PUBLIC BENEFIT PROGRAMS

Any chilling effect that results from the proposed Public Charge Rule will likely be felt most among people accessing SNAP, Medicaid, and the Children's Health Insurance Program (CHIP). Of the major means-tested programs, SNAP and Medicaid and CHIP have the most participation and, unlike TANF, SSI, and other cash assistance programs, are not already considered for public charge purposes.²²

1. MASSHEALTH – MASSACHUSETTS' MEDICAID AND CHIP PROGRAM

In Massachusetts, Medicaid and CHIP are combined into MassHealth, a joint federal-state program that provides free or low-cost health care to low-income people, children, pregnant women, the elderly, and people with disabilities. MassHealth is essential for many children and families, who have access to health care benefits and services that are comparable to those covered by private health insurance and significantly better than if they were uninsured.²³ For children, in particular, the benefits of Medicaid are far-ranging, contributing to higher rates of high school and college completion²⁴ and leading to improved health into adulthood.²⁵ This importance begins before birth, as almost 40 percent of prenatal care is paid for by a government source, including MassHealth,²⁶ making the program essential for both mother and child.

In Massachusetts, there are an estimated 512,000 people (including citizen children) who are in families at or below 300 percent FPL,²⁷ the upper limit of MassHealth eligibility, with at least one noncitizen member. By applying the potential chilling effect range of 10 percent to 35 percent to that number, it is possible that between 51,000 to 179,000 people could disenroll from or decline to participate in MassHealth.

The negative effects that will result from immigrants and their families being dissuaded from participation in MassHealth will likely not be contained to the people themselves; there also may be negative health repercussions for their communities.²⁸ Anecdotal reports suggest that immigrants and the native-born children of immigrants may already be declining preventive care like flu shots, which can have a negative effect on the health of the community at-large by spreading disease.²⁹ A lack of preventive care can also allow a person's otherwise treatable health problems to grow, potentially adding to emergency room demands,³⁰ and hospitalizations.³¹

In addition to the health benefits, increasing health care enrollment helps reduce the costs of uncompensated care; as more of a population declines to enroll in MassHealth, the number of uninsured people, and the uncompensated care costs they incur, will likely grow. From 2013 to 2015, the uninsured rate in Massachusetts fell from 2.4 percent to 1.8 percent, resulting in \$168 million in savings to the state's hospitals' total operating budgets.³² In 2019 dollars, this amount would be \$203 million.³³ MassHealth enrollees who are noncitizens are 2.9 percent of the total Massachusetts population,³⁴ an almost five times larger share of the population than the population that gained insurance from 2013 to 2015. If 10 percent to 35 percent of these

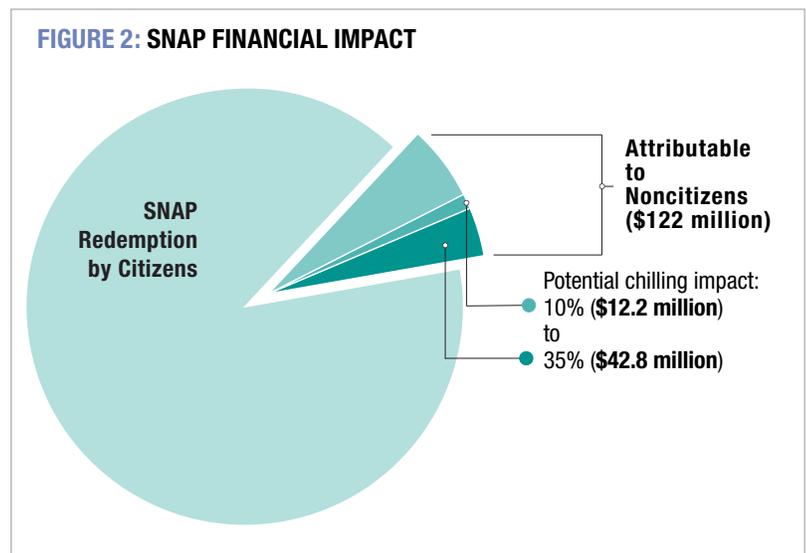
noncitizens were to become uninsured due to the chilling effect, the change could result in approximately \$100 million to \$350 million of uncompensated care costs added to the budgets of the Commonwealth's hospitals.

2. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

SNAP is a federally-funded and state administered program that addresses hunger by supplementing the food budgets of low-income people.³⁵ A person not having enough to eat has been demonstrated to contribute to a wide range of negative health effects, from diabetes to depression to heart failure, as well as increased psychological distress and reduced cognitive function.³⁶ Food insecurity is a significant problem in Massachusetts, though it has a food insecurity prevalence lower than the national average.³⁷ One estimate suggests that food insecurity costs the Commonwealth at least \$2.4 billion dollars per year because of resulting impacts on physical and mental health.³⁸

SNAP is a particularly important program for vulnerable populations, as three-quarters of households that benefit from SNAP include a child, elderly person, or a person with a disability.³⁹ In the case of children, the benefits of reducing food insecurity include improvements in education⁴⁰ and positive health effects that extend decades into the future.⁴¹

Massachusetts retailers redeemed approximately \$1.2 billion in SNAP benefits in 2017, providing a boost to local economies from federal funds that would not otherwise come to the Commonwealth.⁴² Roughly \$122 million of this may be attributable to noncitizens based on an estimate of their participation in the SNAP program,⁴³ and roughly \$12.2 million to \$42.8 million of which may be lost due to the chilling effect (Figure 2). Increased SNAP benefits are also associated with a reduction in health care expenditures,⁴⁴ which means that reduced SNAP benefits could result in increased health expenditures.



HEMOCARE WORKFORCE

Immigrants are an important part of Massachusetts' financial health. Almost one out of every five workers in the state is foreign-born⁴⁵ and more than one out of every seven dollars in state and local taxes is from a foreign-born household.⁴⁶ Foreign-born workers are particularly well represented in the health care sector. The importance of immigrant workers is only expected to grow in the coming years as the Commonwealth's aging population requires more direct care services, including home health aides and nursing aides, and low birth rates increase the need for foreign-born workers.⁴⁷ One estimate indicates that Massachusetts will need approximately 93,000 new home care workers over the next ten years.⁴⁸ The ability to fill these positions with immigrant workers, however, may be hindered by the chilling effect caused by the proposed Public Charge Rule and other measures that contribute to a climate of fear among immigrants.⁴⁹ There are already anecdotal examples of immigrant health aides leaving the United States out of fear caused by the current immigration climate.⁵⁰

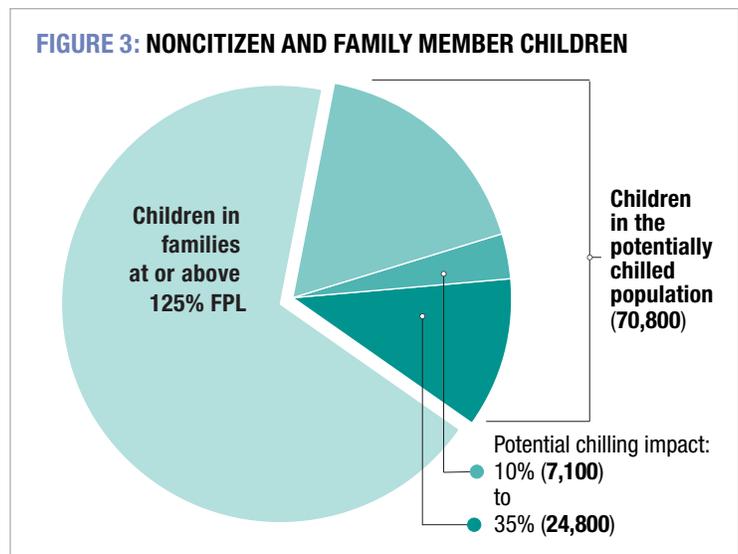
There are almost 100,000 direct care workers in Massachusetts today,⁵¹ 14 percent of whom are noncitizens and almost 40 percent of whom rely on some form of public assistance.⁵² Noncitizen direct care aides utilize public benefits at the same rate as citizen direct care aides,⁵³ which means that almost 5,600 noncitizen direct care aides in Massachusetts are in the potentially chilled population and 560 to almost 2,000 could decline to participate in benefit programs based on this analysis of the potential impact of the proposed rule.

PARTICULAR IMPACT ON CHILDREN

As discussed above, the impact of lack of health care and food security is not limited to physical effects; it can contribute to negative psychological impacts, as well. These effects may be exacerbated by increased concern among immigrants and their families because of recent changes in immigration policy.⁵⁴ These changes have already been observed to cause distress among the Latino citizen children of parents who have been detained and deported.⁵⁵

The negative effects of toxic stress and psychological distress are well documented and range from behavioral issues like trouble sleeping, to mental health issues like depression and anxiety, to physical health problems and chronic conditions.⁵⁶ Toxic stress and psychological distress are particularly harmful to children, often manifesting in issues with emotional development⁵⁷ and problems in school.⁵⁸ Toxic stress experienced in childhood can have lifelong negative effects⁵⁹ and extend for generations, with effects of maternal childhood adversity even passed down to offspring.⁶⁰

Of the approximately 220,900 people who make up the potentially chilled population in Massachusetts, about 70,800 of them are 17 years old or younger.⁶¹ As a result, an estimated 7,100 to 24,800 children could fail to access public benefits because of the chilling effect, potentially causing lifelong harm to their physical and mental health in addition to the immediate difficulties caused by food insecurity and a lack of access to health care (Figure 3).



CONCLUSION

While the proposed Public Charge Rule is still in its comment period and may change before being finalized, the potential exists for it to significantly affect thousands of lives in Massachusetts. A chilling effect among noncitizens and their families could result in a decline in participation in programs like MassHealth or SNAP, whether or not those people are directly subject to the resulting rule. The health of these families could suffer in the present, and the effects may be felt throughout the Commonwealth for years to come.

APPENDIX: TOTALITY OF THE CIRCUMSTANCES

The determination of whether a noncitizen is likely to become a public charge is based on a consideration of the totality of the noncitizen’s circumstances. Under the proposed rule, the circumstances to be totaled would include a specific set of positive and negative findings relative to factors listed in the Immigration and Naturalization Act and shown in this table, which is a simplified version of Table 33 in the proposed Public Charge Rule. If the negative findings outweighed the positives, the noncitizen would be determined a public charge, and thus, inadmissible.

FACTOR	CONSIDERATIONS	WEIGHTING FACTORS
Age	Whether the noncitizen is younger than 18 or older than 61.	<ul style="list-style-type: none"> • Positive if between 18 and 61. • Negative if younger than 18 or older than 61.
Health	Whether the noncitizen has a medical condition likely to require extensive medical treatment or institutionalization or interfere with ability to care for oneself, attend school or work.	<ul style="list-style-type: none"> • Positive if there is no such condition. • Negative if there is such a condition.
Family Status	Whether the noncitizen supports a household or is supported by another household.	<ul style="list-style-type: none"> • Positive if the alien can support the alien’s household at not less than 125% of the Federal Poverty Guidelines (FPG). • Negative if unable to support the alien’s household at not less than 125% FPG.
Assets, Resources & Financial Status	Annual gross household income and additional income from outside the household.	<ul style="list-style-type: none"> • Positive if at least 125% FPG; Negative if below. • Heavily Weighted Negative if unable to demonstrate employment, employment history or reasonable prospects of employment. • Heavily Weighted Positive if work income at least 250% of FPG.
Financial Status	Household cash assets and resources and non-cash assets and resources that can be converted into cash within 12 months.	<ul style="list-style-type: none"> • Positive if at least 5 times the difference between total household income and 125% of FPG; Negative if below. • Heavily Weighted Positive if assets, resources and support at least 250% of FPG.
	Whether the noncitizen has financial liabilities.	<ul style="list-style-type: none"> • Negative if noncitizen has financial liabilities.
	Whether the noncitizen applied for, received or was certified or approved to receive a public benefit.	<ul style="list-style-type: none"> • Heavily Weighted Negative if receiving a public benefit or has received one within preceding 36 months.
	Whether the noncitizen applied for or received a fee waiver for an immigration benefit request.	<ul style="list-style-type: none"> • Positive if the noncitizen has not applied for or received such a waiver. • Negative if the noncitizen has received such a waiver.
	Whether the noncitizen has a good credit history and score.	<ul style="list-style-type: none"> • Positive if credit is good and has a credit score. • Negative if credit is bad and score is low.

FACTOR	CONSIDERATIONS	WEIGHTING FACTORS
Financial Status (continued)	Whether the noncitizen has private health insurance or the resources to pay for reasonably foreseeable medical costs related to a medical condition as described under the Health factor.	<ul style="list-style-type: none"> • Heavily Weighted Negative if the noncitizen has such a condition, is uninsured, and lacks the prospect of obtaining private health insurance or such resources.
	Whether the noncitizen was previously found inadmissible or deportable on public charge grounds.	<ul style="list-style-type: none"> • Heavily Weighted Negative if previously found inadmissible or deportable as a public charge.
Education & Skills	Whether the noncitizen has an employment history.	<ul style="list-style-type: none"> • Positive if the noncitizen has adequate education and skills to obtain or maintain employment sufficient to avoid becoming a public charge. • Negative if lacking employment history.
	Whether the noncitizen has a high school diploma and higher education.	<ul style="list-style-type: none"> • Negative if lacking a high school diploma or higher education. • Negative if lacking adequate education and skills to obtain or maintain employment sufficient to avoid becoming a public charge.
	Whether the noncitizen has occupational skills, certifications or licenses.	<ul style="list-style-type: none"> • Positive if able to obtain skilled or higher paid labor.
	Whether the noncitizen is proficient with English or in other languages.	<ul style="list-style-type: none"> • Positive if sufficiently proficient to enter the U.S. job market. • Negative if unfamiliar with English sufficient enough to enter the job market.
Affidavit of Support*	Sponsor's annual income, assets and resources.	<ul style="list-style-type: none"> • Positive if sponsor's assets and resources are at least 125% of the Federal Poverty Level (FPL). • Disqualifying if sponsor's assets and resources are less than 125% FPL.
	Sponsor's relationship to the applicant and the likelihood that the sponsor would actually provide financial support.	<ul style="list-style-type: none"> • Positive if likely that the sponsor would provide financial support. • Negative if unlikely that the sponsor would provide financial support.

*Required for family-sponsored immigrants and employment-based immigrants petitioned by a relative.

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