

# **PUBLIC CHARGE & EARLY SUPPORT FOR INFANTS AND TODDLERS**

*EDUCATING PROVIDERS AND FAMILIES ABOUT THE ADMINISTRATION'S  
PROPOSED PUBLIC CHARGE RULE CHANGES*

Department of Children, Youth and Families



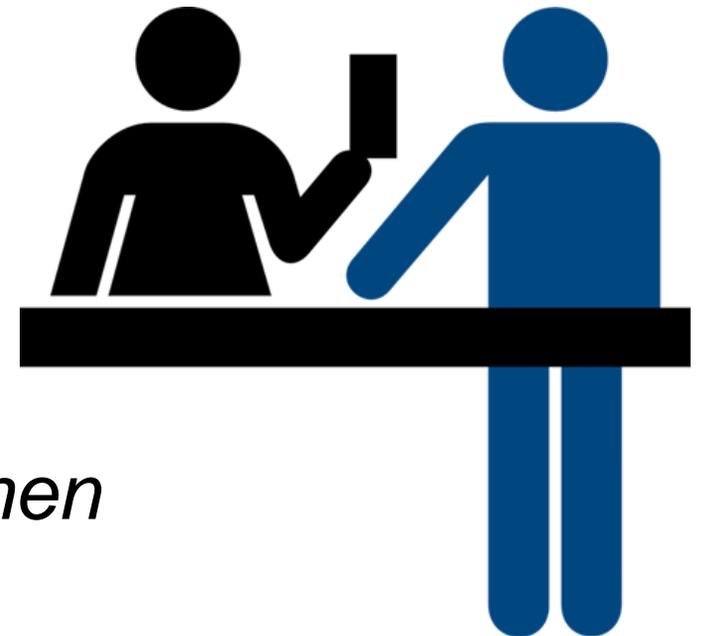
WASHINGTON STATE  
Department of  
Children, Youth, and Families

# BACKGROUND: *PUBLIC CHARGE*

“**Public Charge**” is a term used in immigration law to refer to a person who is likely to become primarily dependent on the government for support.

A public charge assessment is made:

- When a person **applies to enter** the U.S. or
- **Applies to adjust status** to become a Lawful Permanent Resident (LPR), **NOT** *when applying to become a U.S. citizen*



# WHO DOES THE PUBLIC CHARGE TEST APPLY TO?

## Applies to:

- A person abroad who **applies to enter** the U.S.
- An individual who **applies to adjust status** to become a to become a Lawful Permanent Resident (LPR), also known as getting a green card.

## DOES NOT apply to:

- Undocumented individuals
- Individuals that are applying to become a U.S. Citizen (applying for naturalization)
- Children or family members of those applying, unless they themselves are applying for LPR status.
- Certain humanitarian immigrants, including refugees, asylees, those applying for a green card under the Violence Against Women Act (VAWA), individuals who have or are applying for U or T visas, children seeking Special Immigrant Juvenile Status, as well as some other protected categories are either exempt or can qualify for a waiver of public charge.

# BACKGROUND: *PUBLIC CHARGE*

Under current policy, only two types of public benefits may be considered:

1. **Cash assistance** for income maintenance
2. **Institutionalization for long-term care** at government expense

# THINGS TO KEEP IN MIND

## **PART C SERVICES**

- Not considered under public charge test

## **TOTALITY OF CIRCUMSTANCES**

- Immigration officers are required to look at many factors, including:
- Age
- Family Status
- Health
- Financial Status

**PUBLIC CHARGE:**

**NOTICE OF PROPOSED RULEMAKING  
(NPRM)**



# PUBLIC CHARGE PROPOSED RULE

**DRAFT Notice of Proposed Rulemaking (NPRM)-** leaked to the press in February and March of 2018

**Official NPRM-** posted to the Federal Register September 22, 2018

**Official Proposed Rule-** posted to the Federal Register October 10, 2018

# CHANGES IN THE PROPOSED RULE

- **DEFINITION CHANGE**
- **NEW NEGATIVE FACTORS**
- **ADDITIONAL BENEFITS INCLUDED**

# PROPOSED RULE: *Definition Change*

## **Current definition:**

- *“An alien who is likely to become primarily dependent on the Government for subsistence.”*

## **Proposed definition:**

- *“An alien who is likely at any time to use or receive one or more public benefits.”*

# PROPOSED RULE:

## *New standards and heavily weighted factors*

### **Heavily weighted factors**

- Proposed rule gives negative weight to children or seniors, persons with limited English proficiency, poor credit history, limited education, or a large family.

### **New income thresholds**

- **Negative** weight to immigrants who earn < 125 percent of the Federal Poverty Level (FPL; \$31,375 for a family of four)
- **“Heavily positive”** weight to immigrants of employable age and/or working with income and assets of at least 250% FPL (\$63,000 for a family of four)

# PROPOSED RULE: *Benefits considered*

Current rule	Proposed rule
<ul style="list-style-type: none"><li>• Temporary Assistance for Needy Families (TANF) (WorkFirst)</li><li>• Supplemental Security Income (SSI)</li><li>• General Assistance or other local cash assistance programs.</li><li>• Long-term institutional care paid by the government (e.g., Medicaid to stay at a nursing home).</li></ul>	<ul style="list-style-type: none"><li>• All benefits currently considered, plus</li><li>• Health programs like non-emergency Medicaid</li><li>• Supplemental Nutrition Assistance program (SNAP) (Basic Food)</li><li>• Housing assistance, such as public housing or Section 8 housing vouchers and rental assistance</li><li>• Medicare Part D Low income subsidy</li></ul>

# BENEFITS **NOT** CONSIDERED

- Disaster relief
- Emergency medical assistance
- Entirely state, local or tribal programs (other than cash assistance or institutionalization for long-term care)
- Benefits received by immigrant's family members
- CHIP\*
- 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

*\*DHS is asking for input on inclusion of CHIP, but the program is not included in the regulatory text*

# PROPOSED RULE: *Benefit exemptions*

- **Certain benefits specifically exempt**
  - Retirement, Survivors, and Disability Insurance (RSDI)
  - Veteran's benefits
  - Unemployment
  - Worker's comp
  - Medicare
  - In-state tuition and gov't loans that require repayment
  - Emergency and disaster assistance

# PROPOSED RULE: *Part C Exemption*

## Proposed rule exempts:

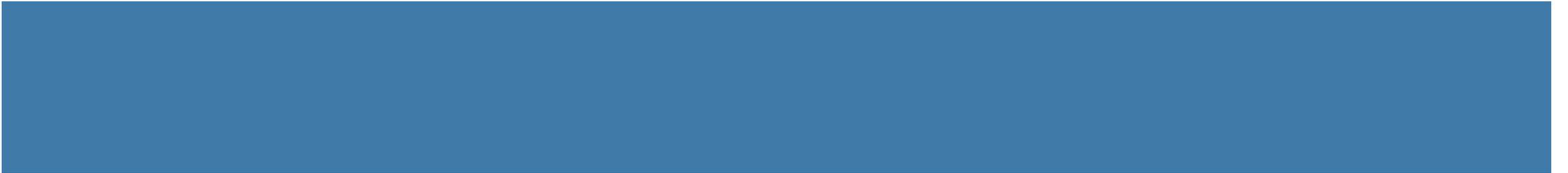
“Services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400 et seq.”

## This means:

- Part C/ESIT services are exempt from the current public charge policy AND the proposed rule.
- Even if the proposed rule is finalized, **Part C services will not be considered as part of a public charge test**

PUBLIC CHARGE:

**PUBLIC COMMENTS, DATA AND  
RESOURCES**



# NOTICE AND COMMENT PERIOD: *PUBLIC COMMENTING*

## **WHAT**

- Requirement to open, review and address public comments
- Public comment period is open through December 10, 2018

## **WHY**

- Share how your organization and the families you serve may be impacted

## **WHO**

- Anyone!

## **HOW**

- Go to: [www.regulations.gov](http://www.regulations.gov)
- Enter **1615-AA22** in the search bar.

# MEASURING THE IMPACT

- How are the proposed immigration policies impacting the families you serve?
- Are you getting more questions from families about how immigration policies may interact with ESIT services or other types of services?
- Have you seen a shift or increase in declination of services from families?
- Have you seen more hesitation among families in signing certain forms to enroll in ESIT?

# COMMUNICATING WITH FAMILIES: *TALKING POINTS*

- This is a *proposed* rule. The policy on public charge decisions made within the U.S. has not yet changed.
- Not all immigrants are subject to the public charge test.
- Part C/ESIT services are exempt from a public charge test.
- Each situation is different- families should consult with an immigration attorney about their situation.

# RESOURCES

- Provider resource document & [Infographic](#)
- Family resource document
- Governor Inslee's Immigration and Refugee Resource page
- City of Seattle Office of Immigrant and Refugee Affairs Resource page
- Northwest Immigrant Rights Project (206-587-4009)
- Immigration Advocates' resources

# QUESTIONS

- If you have any questions, please contact Sue Rose with the Early Support for Infants and Toddlers Program.
- [sue.rose@dcyf.wa.gov](mailto:sue.rose@dcyf.wa.gov)