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INSIGHTS

Summary of Proposed Public Charge Rule

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On November 19, the Department of Homeland Security (DHS) published in the Federal Register a [propsoed rule](#) rescinding the 2022 public charge ground of inadmissibility regulations. Public comments are due December 19, 2025. This memorandum presents a high-level summary of the pre-release version of the rule.

I. BACKGROUND AND REGULATORY CONTEXT

The proposed rule represents a significant shift away from the narrower 2022 public charge framework and moves toward a more expansive interpretation similar to the 2019 rule. If finalized, the rule will increase disenrollment, disrupt care, and place significant documentation burdens on Medicaid Plans and members. The proposed rule establishes a transition framework whereby applications filed before the final rule's effective date follow the existing 2022 rule, and those filed after must comply with the new framework.

II. 8 CFR 103 – PROCEDURAL AMENDMENTS

The proposed rule updates procedural provisions governing DHS adjudications and introduces enhanced oversight structures for public charge bond monitoring and enforcement. The agency proposes revised notice procedures for bond breach, clarified timelines, and increased evidence submission options. These changes formalize the agency's authority to request additional information regarding an applicant's financial stability or benefit utilization.

III. 8 CFR 212.21 – DEFINITIONS

The proposed rule expands and clarifies multiple public charge-related definitions, including 'public benefit', 'cash assistance for income maintenance', and 'long-term institutionalization'. Unlike the 2022 rule, which excluded most non-cash benefits, the proposed rule opens the door to including programs such as Medicaid, nutritional programs, housing vouchers, and other social supports. The agency requests comment on which non-cash benefits may be considered predictive of future dependence.

IV. 8 CFR 212.22 – PUBLIC CHARGE INADMISSIBILITY FRAMEWORK

The agency reinstates a broad, multi-factor totality-of-the-circumstances test aligned with section 212(a) (4) of the Immigration and Nationality Act. The agency proposes updated evidentiary standards that require detailed disclosures about income, assets, liabilities, credit history, health conditions, household size, and benefit use—including non-cash programs. Applications may be evaluated using weighted negative factors such as benefit receipt, poor health combined with lack of insurance, limited English

proficiency, and limited financial reserves. Positive factors may include high income, private health insurance, strong employment history, and education or skills.

Fear of immigration consequences may cause members to disenroll from Medicaid or decline medically necessary services. This poses continuity-of-care risks, affects quality metric performance, and increases costs associated with preventable acute events.

A. Age

The proposed rule reintroduces age as a weighted factor. Applicants at extremes of age may be viewed as higher risk for future dependence. For health plans, this may reduce enrollment among older immigrants seeking Medicaid for chronic care or younger dependents requiring pediatric services.

B. Health

The proposed rule explicitly links negative weight to health conditions requiring ongoing medical treatment without adequate insurance coverage. This may incentivize immigrant members to avoid documenting chronic illnesses or seeking needed specialty care. Plans may see increased emergency utilization and unreported conditions.

C. Family Status

Larger households may be negatively evaluated if resource limitations are present. Immigrant families may avoid enrolling eligible children in Medicaid/CHIP to minimize the appearance of reliance on benefits.

D. Assets, Resources, and Financial Status

Expanded financial documentation may require applicants to disclose assets, debt, liabilities, and remittances. Immigrants may believe that using Medicaid indicates insufficient resources, prompting disenrollment.

E. Education and Skills

Lower education levels or limited English proficiency may be treated as negative predictors of future self-sufficiency. This may affect vulnerable immigrant groups and impact culturally competent outreach efforts by plans.

F. Benefit Use History

The proposed rule seeks comment on including non-cash benefits such as Medicaid, HCBS, WIC, SNAP, or housing assistance. If adopted, immigrant enrollees may fear any interaction with public benefits, disrupting continuity of care and leading to worse outcomes and higher costs.

V. 8 CFR 213 – PUBLIC CHARGE BONDS

The proposed rule revamps the public charge bond system. Bonds may be required where an applicant presents risk of future dependence. The agency defines breach more clearly: benefit receipt during the enforceable period, failure to meet financial obligations, or misreporting. Bond cancellation criteria are also updated, allowing cancellation upon attainment of LPR status, end of enforceability, or proof of financial stability.

VI. FORMS I-485, I-945, AND I-356

The proposed rule adds extensive information-collection requirements to Forms I-485, I-945, and I-356. Applicants must disclose detailed financial data, health insurance arrangements, household composition, and past benefit use. Members may request documentation from their Medicaid plan to prove insurance coverage or non-use of benefits.

Compliance Implication: Members may request documentation from health plans to prove insurance coverage or non-use of benefits. General Counsel should confirm that such documentation requests follow appropriate privacy and HIPAA channels, and that no misleading or legally risky explanations are provided to members about the rule or their benefit usage.

VII. COMMENT TOPICS THE AGENCY SEEKS INPUT ON

The agency seeks comments on the following areas.

A. Which Non-Cash Benefits Should Be Included

1. Whether certain non-cash public benefits (e.g., health benefits, housing assistance, nutrition programs) should count toward a public-charge determination (and if so, which ones).
2. How to define the threshold of benefit use (duration, frequency, value) that signals “dependence.”
3. Whether receipt of benefits by other household members (rather than the applicant) should be considered.

B. Definition of “Public Charge” / “Dependence”

1. How the term “likely at any time to become a public charge” should be defined or clarified.
2. What weight should be given to “primary dependence on government support” versus other factors.
3. How “dependence” should be operationalized (asset depletion, benefit use over time, lack of resources, etc.).

C. Evidence & Documentation Requirements

1. What evidentiary standards applicants should meet (income, assets, liabilities, credit history, employment, insurance, benefit use).
2. How far back and how detailed documentation needs to be (household composition, benefit history, insurance status).
3. Whether and how private health insurance coverage should weigh in as a positive factor or offset other risks.

D. Factor Weighting in the Totality-of-Circumstances Test

1. How to weigh negative factors (e.g., receipt of benefits, poor health, lack of insurance, limited skills/education, large dependents) and positive factors (e.g., high income, significant assets, private insurance, strong employment history).
2. Whether certain factors should be “heavily weighted” or carry presumptive significance.
3. How to treat mixed factors (e.g., use of benefits + strong employment) in the balancing process.

E. Bond Regime / Public Charge Bonds

1. Under what circumstances a public-charge bond should be required.
2. What counts as “breach” of a bond, what are appropriate cancellation or release criteria, and what monitoring/enforcement mechanisms should apply.
3. How sureties should function, and whether benefit receipt by the applicant should trigger automatic breach or discretionary review.

F. Information-Collection Burden / Form Revisions

1. The estimated burden hours for applicants and sponsors in responding to new form requirements (e.g., expanded fields for assets, liabilities, benefit history, insurance).
2. Whether the forms (e.g., I-485, I-945, I-356) appropriately capture the proposed data without unnecessary complexity.
3. How to streamline or reduce duplication while maintaining integrity of the determinations.

G. Implementation & Transition Provisions

1. How to transition from the current rule to the proposed rule for pending applications, benefit use records, and bond postings.
2. Whether a phased implementation or grandfathering should apply, and how to treat applications filed before the effective date.
3. Whether exceptions or carve-outs should apply to vulnerable populations (e.g., children, immigrants with disabilities, older applicants).

H. Impact on Vulnerable Populations / Equity Considerations

1. How the proposed rule might affect immigrant children, immigrants with disabilities, older individuals, or mixed-status households.
2. Whether the rule would have disparate impact on certain racial/ethnic groups, or income/education strata, and how to mitigate such risks.
3. How chilling effects (fear of benefit use) should be considered in regulatory design and public health/health-insurance access contexts.

We trust you found this summary useful. Please reach out to [us](#) with any questions.

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