

Immigration and Public Benefits



Presenters and Panel Members:

Megan Sprecher, End Domestic Abuse WI

Shannon Drake-Buhr, WPHCA

Stephanie Severs, Covering Wisconsin

Caroline Gomez-Tom, Sixteenth Street Community Health Centers

Mariah Hennen, Legal Action-Wisconsin

Ana Montoya, Community Health Systems, Inc



Our collaboration came together in February 2019 to discuss the troubling, rising level of fear among our immigrant clientele.

Our aim is to:

- develop and circulate information to dispel myths
- reduce confusion
- promote the safety and value of accessing supportive, means-tested benefits for those who are eligible.

Learning Objectives

1. Build a basic understanding of the growing complexity of the intersection of immigration policy and public benefits.
2. Learn how to screen individuals and families whose immigration status might be impacted by enrolling in public benefits, such as BadgerCare and Foodshare.
3. Learn how to connect concerned individuals and families with reliable free or low-cost legal services.

Our Guiding Principles

1. We understand and respect the fear, confusion, and stress immigrants may experience in this challenging climate.
2. Circumstances change, sometimes quickly.
3. Our aim is to empower individuals to make an informed decision about using public benefits.



Documenting Immigration Status

Do not document immigration status of patients in the electronic health records (EHR) or anywhere else.

Undocumented family members don't need to share their immigration status or social security number on applications for:

- Public benefits for family members who are documented (WIC, food, healthcare and more)
- Sliding scale fees (low-cost) at community health centers

Index

- Benefits for immigrants
- **Current state of rules**
- Working with families
- Guide
- Legal referrals
- Questions

Current State of Rules



Public Charge: What is It?

Public charge is defined as someone who the federal government determines likely to become **primarily dependent** on the government for basic needs.

If someone is considered likely to become a public charge by the U.S. Citizenship and Immigration Services or U.S. Department of State, this can impact their eligibility to:

- Gain a visa to enter the U.S.
- Gain permanent residency (a “green card”)
- Renew status

When does it apply?

Only applies when immigrants apply to:

- **Enter the US**
- **Renew status**
- **Become a lawful permanent resident**



There is **no** public charge test when a permanent resident applies for naturalization.

Mainly impacts individuals who hope to immigrate through a family member

Who is **Exempt** from Public Charge?

Immigrants safe from the new public charge rule:

- Naturalized citizens
- Green card holders-unless you leave U.S. for more than 6 months
- Refugee or asylee
- Special Immigrant Juvenile Status
- U or T Visa (victims of crime or trafficking)
- Violence Against Women Act approved self-petition
- Relief under Cuban Adjustment Act, Nicaraguan and Central American Relief Act, Haitian Refugee Immigration Fairness Act
- Special Immigrant Visa Holder (Afghan or Iraqi nationals who have helped the US)

New Immigration Rules Depend on Where you Must Process Paperwork

When immigrants must adjust, renew, or apply for their status, they will do so either from **inside** the U.S. or **outside** the U.S.

- **Consular processing** is when you apply from **outside** the U.S.
- **Adjustment of status** is when you apply from **inside** the U.S.

Most immigrants don't get to choose how they will process their paperwork.

Gaining Status via **Consular Processing** or **Adjustment of Status**

When does someone consular process v. adjust status?

Depends on variety of factors, including whether they currently live in the U.S., how they entered, who petitioned for them, current status, etc.

Why is the distinction important?

Currently there are different public charge assessments made for consular processing v. adjusting status.

Consular processing is more complicated - talk to an attorney.

Current Public Charge Rule In Affect Until 10/15/19 (Adjustment of Status)

1. Currently immigration looks at these factors: age, health, family status, assets, resources, financial status, education and skills

If you don't have a **green card** (are not a permanent resident), but use one of these benefits, it may affect your chance of getting a green card if you are adjusting status from within the U.S.:

- **W-2 (Wisconsin Works)** cash assistance
- **Long term care institutionalization** at government expense
- **Supplemental Security Income (SSI)**- cash assistance for disabled people who have very low incomes (includes a monthly WI state payment of \$83.35 for one or \$132.05 for a married couple)

If someone in your household besides you gets W-2 or SSI and it is your family's only income, it could affect your chances of getting a green card

2. Affidavit of Support: submitted by sponsor/co-sponsor

New Public Charge Rule for processing **inside the U.S.**

Applies only to applications submitted on or after **October 15, 2019**

New Definition

A very different definition of public charge

Weighted Factors

New factors considered, designed to make it harder for low- and moderate-income people to pass

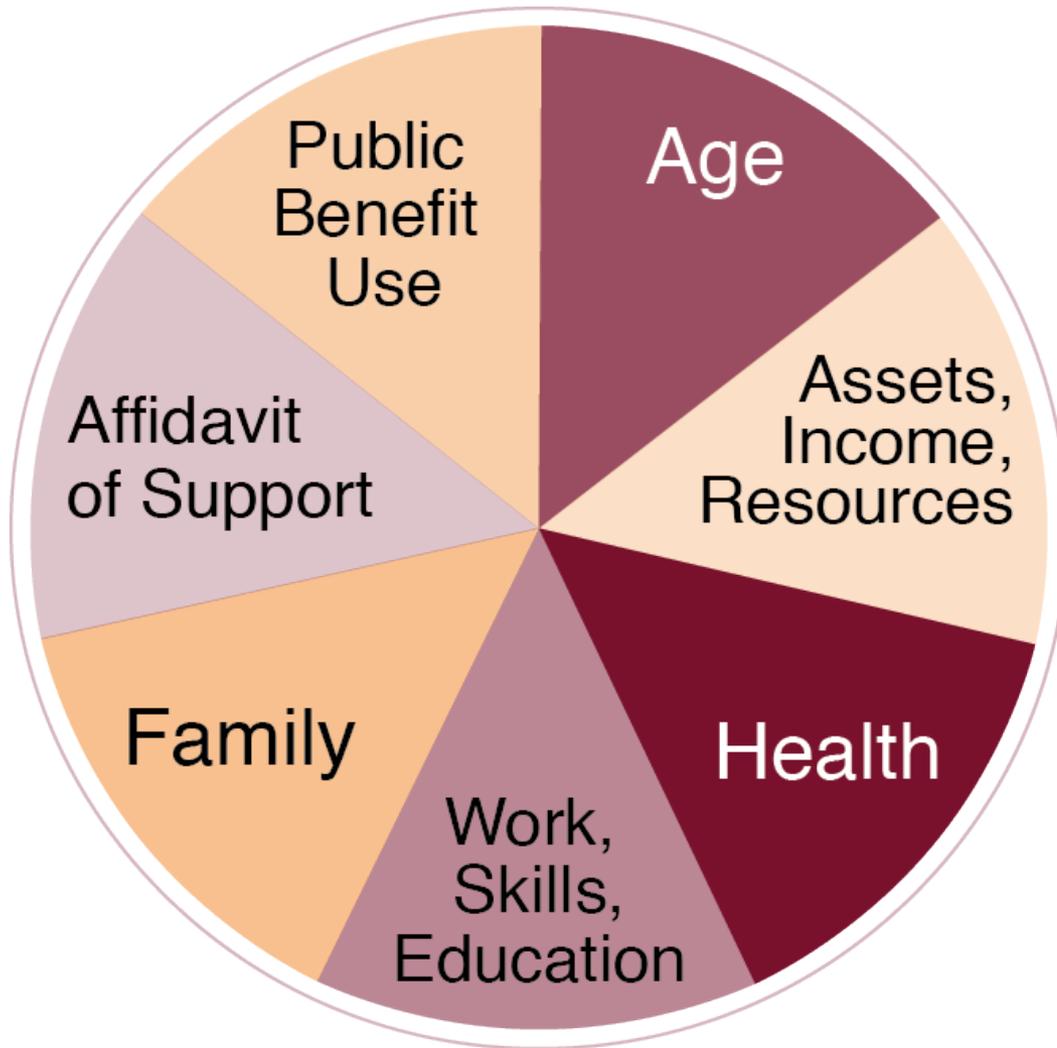
Additional Benefits

Additional public benefits programs considered by immigration officials.

A Forward Looking Test

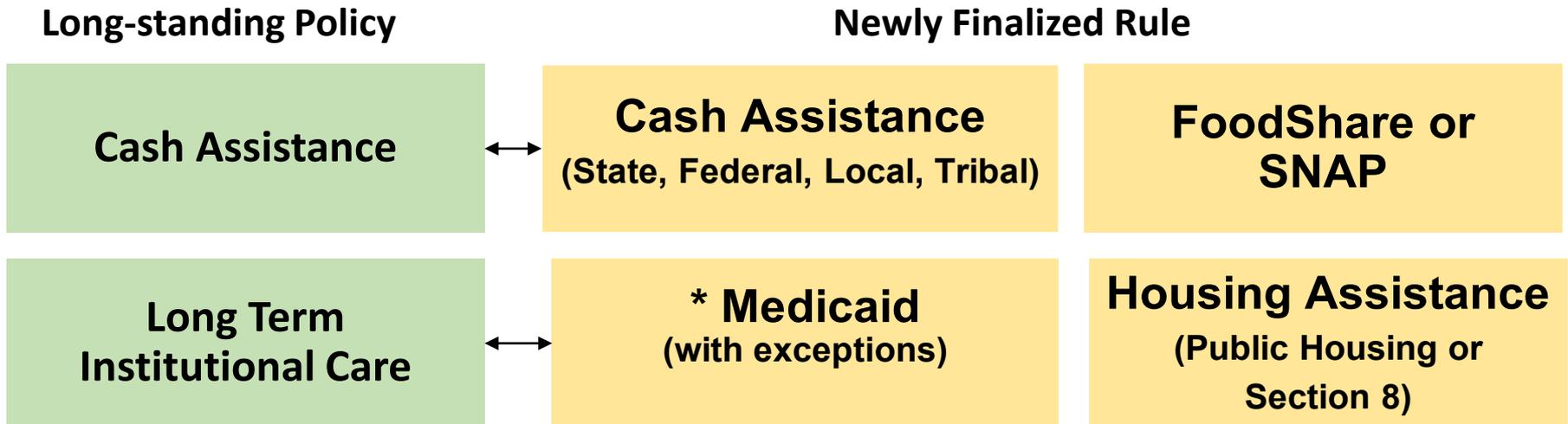
- If the government determines that a person is “likely at any time to become a public charge” in the future, it can deny a person admission to the U.S. or lawful permanent residence.
- **New Definition:** A person who “receives one or more public benefit... for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months).”

Factors of Public Charge Test



Immigration will consider the number and type of benefits used, length of use, and how recent the use was.

Additional Benefits Considered



* Exceptions for Emergency Services, & coverage of children under age 21, and pregnant women.

Which Programs are Considered Medicaid Programs?

Medicaid Programs

BadgerCare Plus

Medicaid

Family Planning Only Waiver

Tuberculosis-Related Services-Only

Wisconsin Well Woman Medicaid

What do we tell immigrants and their families about the new rule?

- **Seven appeals have been filed and two requested a delay of implementation or nationwide injunction**
- **The rule is not in effect yet.**
 - Applies only to applications submitted on or after October 15, 2019.
 - Newly named benefits used prior to that date will not be considered.
- **Not everyone is subject to the rule.**
 - Many immigrants are exempt
 - Benefits used by family members will not be counted.
- **Positive factors can be weighed against negative factors in this forward-looking test.**
- **Every situation is different.**
 - Consult with an immigration attorney with questions about your case.

Index

- Benefits for immigrants
- Current state of rules
- **Working with families**
- Screening tool
- Legal referrals
- Questions

Working with Immigrant Families



Wisconsin
Collaboration on
**Immigrants and
Public Benefits**

Benefits Not Considered

Healthcare:

- Marketplace Premium Tax Credits
- Emergency Services Medicaid
- Prenatal Services
- Price discounts at community health centers
- Hospital financial assistance
- BadgerCare Plus (Medicaid) for children under age 21
- Well Woman Program
- Ryan White Care Act
- 340B & Prime Vendor Program for medications
- Seal-A-Smile Dental Program

Childcare programs:

- Childcare vouchers
- Head Start

Food Programs:

- WIC food assistance
- Summer meal program
- Food pantries
- Free and reduced price school meals

School based assistance:

- Bus vouchers
- School meals
- Other school programs
- Transition Education Program

Programs for children with disabilities:

- Birth to 3
- Katie Beckett

Other programs:

- Energy assistance
- Homeless shelters
- Student loans
- Disaster relief programs
- Services from child abuse, domestic abuse, and sexual assault programs, including shelter

Financial Assistance from the Marketplace

- Known as the premium tax credit, this credit lowers your monthly insurance premiums. It is based on the income estimate and household information you put on your Marketplace application.

This assistance is not considered a public benefit.

Environmental Scan of Rules

PUBLIC CHARGE: Visas and green card processing <i>outside</i> the U.S. (DOS - Foreign Affairs Manual (FAM))	PUBLIC CHARGE: Visa extensions & Status changes (DHS Proposed Rule)	PUBLIC CHARGE: Green card processing <i>inside</i> the U.S. (DHS Proposed Rule)	SPONSOR DEEMING & LIABILITY: Potential application to more programs (White House memo)	PUBLIC CHARGE: Grounds for deportation (Anticipated DOJ NPRM)	PUBLIC CHARGE: Low-income immigrants lose access to green cards & cut off from citizenship / voting rights.
CITIZENSHIP QUESTION IN CENSUS 2020: Chills civic participation and will limit funding for basic needs programs that depend on accurate counts (SCOTUS decision)	PUBLIC HOUSING ACCESS: Closes door to mixed status families (HUD Proposed Rule)		FEE WAIVER: Removing receipt of means-tested benefits from eligibility list (DHS Proposed Rule)	FEE WAIVER: Low-income immigrants lose access to citizenship/ voting rights. (DHS Proposed Rule)	

What's Happening in the Immigrant Community?

- Families unenrolling/not enrolling in public benefits
- Confusion over new rule vs. Foreign Affairs Manual changes
- Fear about disclosure of personal information to ICE
- Many families making decisions about benefits without an accurate understanding of the impact to their status or their family's status

Who Has Expertise to Help?

Legal experts who work with low-income populations

Immigration attorneys who do not routinely work with low-income families may not be as familiar with nuances of public charge/public benefits and may err on the side of caution.

It is okay to get a second opinion. If you consult with a second attorney, that attorney is prohibited by the Rules of Professional Conduct for Attorneys from telling your first attorney about the consult without your permission.

Index

- Benefits for immigrants
- Current state of rules
- Working with families
- **Guide**
- Legal referrals
- Questions

Guide

Immigration & Public Benefits in Wisconsin

The government has changed the rules for some immigrants who use public benefits. These new rules don't apply to U.S. citizens.

One rule, called public charge, goes into effect on **October 15, 2019**. There are legal battles that may delay or stop this new rule.

For up to date information, go to www.coveringwi.org/immigration

What is public charge?

Public Charge - someone the government believes is likely to become dependent on the government for basic needs.

If you are a public charge, this can affect your future ability to:

- Get a visa to enter the U.S.
- Get a permanent residency card ("green card")
- Change or renew status (doesn't apply to green card holders or applications for citizenship)

1. Immigrants safe from the new Public Charge rule:

- Green card holders - unless you travel outside the U.S. for more than 6 months.
- Refugee or asylee
- Special immigrant juvenile
- U or T Visa (visas for victims of crimes)
- Violence Against Women Act (VAWA) approved self-petition
- Afghan and Iraqi employees of US armed forces
- Members and families of the US Armed Forces, Ready Reserves, or military serving in active duty
- Relief under Cuban Adjustment Act (CAA), the Nicaraguan and Central American Relief Act (NACARA) or the Haitian Refugee Immigration Fairness Act (HRIFA)

What is a green card?



A green card is a permanent resident card.

If you have one of these statuses, you can safely use public benefits without hurting your chance of getting a green card or citizenship.

⚠ If you plan to petition, sponsor, or co-sponsor a family member to get a green card, and they must apply from a U.S. Consulate outside the U.S., using public benefits may affect their application.

2. Immigrants who may be affected by the new rule

If your status is not in the list above, the public charge rule might affect you.

The rules are different depending if you must apply for, renew, or change your status from inside or outside the U.S..

Check the back for more information



This document, created by Covering Wisconsin, is not legal advice. For legal advice, please talk to a lawyer or accredited representative who specializes in immigration or public benefits law.
September 6th, 2019

Before Using the Guide:

Remember:

In fearful or stressful moments, people will likely struggle to understand policy and how it might affect them.

Use:

- Everyday language and explain jargon
- Enunciate and go slowly
- Repeat and summarize often
- Ask questions to check comprehension as you go

Check for the Statuses Below:

1. Immigrants who can safely use public benefits:

- Naturalized citizens
- Green card holders - **unless** you travel outside the U.S. for more than 6 months.
- Refugee or asylee
- Special immigrant juvenile
- U or T Visa (visas for victims of crimes)
- Violence Against Women Act (VAWA) approved self-petition
- Afghan and Iraqi employees of U.S. armed forces
- Members and families of the U.S. Armed Forces, Ready Reserves, or military serving in active duty
- Relief under Cuban Adjustment Act (CAA), the Nicaraguan and Central American Relief Act (NACARA) or the Haitian Refugee Immigration Fairness Act (HRIFA)

If you have one of these statuses, you can safely use public benefits without hurting your chance of getting a green card or citizenship.

⚠ If you plan to petition, sponsor, or co-sponsor a family member to get a green card, your use of public benefits may affect their application.

What is a green card?



A green card is a **permanent resident card.**

Apply for, renew, or change your status from **inside** the U.S.

1. For people who can change or apply for their status from inside the U.S.:

The public charge rule will **only** affect you if you use, or apply to use, any of these benefits:

- BadgerCare Plus Healthcare (Medicaid or ForwardHealth) for adults. **Except** anyone under age 21, Emergency Services for adults and children, or care for pregnant women until 60 days after the birth of the baby.
- Assisted living, nursing home, or home care paid for by a Medicaid long-term care program.
- Food assistance from FoodShare (also called food stamps, QUEST, or EBT)
- Cash benefits from Wisconsin Works (W2) or Supplemental Security Income (SSI)
- Housing assistance from Public Housing or Section 8

Using these benefits may affect you, if you need to change your status, apply for a green card, apply for a visa, or renew a visa.

Immigration will consider the number and type of benefits used, how long you used the benefits, and how recent the use was.

If you get other benefits not listed above, they will not affect your immigration status.

Use of any benefits by family members will not affect your application.

Immigration looks at these factors:

- Age
- Assets & Income
- Health
- Family Size
- Work, Skills & Education
- Public Benefit Use
- Affidavit of Support



Apply for, renew, or change your status from **outside** the U.S.

2. For people who must change or apply for their status from outside the U.S.:

U.S. consulates outside the U.S. use stricter rules in making a public charge decision.

If you use public benefits and plan to:

- Apply for a green card
- Sponsor or co-sponsor an immigrant to get their green card
- Apply for entry to the U.S.
- Renew status

You may want to talk to a lawyer to better understand how using benefits may affect you or your family's immigration status.



Index

- Benefits for immigrants
- Current state of rules
- Working with families
- Guide
- **Legal referrals**
- Questions

Legal Referrals



Make the case for getting legal advice.

1. A lawyer can help you understand how each part of the public charge test may affect your family.
2. A lawyer can also look to see if you're eligible for immigration relief.
3. All information you share with a lawyer is confidential.
4. You can always get a second opinion.

Lawyers Can Help Sort Through Weighted Factors of the Totality of Circumstances Test

Factor	Considerations
Age	↑ Between 18-61
Assets, resources, and financial status	↓ Family income below 125 percent of FPL ↑↑ Family income above 250 percent of FPL ↓ Past application for or receipt of listed public benefits ↓↓ Prior receipt of listed public benefits for more than 12 months in the aggregate in any 36-month period ↑↑ Covered by private, nonsubsidized health insurance
Health	↓↓ Medical condition that is likely to require extensive treatment or institutionalization or will interfere with ability to attend school, or work and is uninsured and has neither the prospect of obtaining private health insurance nor the financial resources to pay for medical costs related to a medical condition.
Education and skills and work.	↓↓ Cannot show current employment, recent employment history, or a reasonable prospect of future employment and is not a full-time student ↓ Lack of IRS wage data, credit history, or high school diploma ↑↑ Authorized to work and employed with an annual income of ≥ 250% ↑ Proficiency in English
Prospective immigration status	↓↓ Previously been found by an immigration judge or the Board of Immigration Appeals to be inadmissible or deportable based on public charge grounds.

Free Services

Free Legal Services. Call to see if you qualify.

Community Immigration Law Clinic – Call 608-257-4353
If you need an interpreter, call and leave a message. Free walk-in services on the 2nd and 4th Friday of the month from 2p.m. - 5p.m. at 944 E. Gorham St. **Madison, WI.**

Rise Law Center - Call 608-256-1015
Free services for victims of abuse and trafficking. Sliding scale fees available for others.
Madison & Janesville, WI. English and Spanish.

Centro Hispano of Dane County – Call 414-342-3000
Free legal consultations on the 1st and 3rd Friday of each month. Call for an appointment. English and Spanish.

International Institute of Wisconsin
Free walk-in services available on Fridays from 9 a.m. - 11 a.m. at 1110 North Old World Third Street, Suite 420, **Milwaukee, WI.** Bring your own interpreter, if needed.

Sunshine Legal Clinic – 608-616-0539
Free legal consultations on the 1st Thursday of each month from 5-7p.m. 1632 West Main St. **Sun Prairie, WI**

Rise Law Center has specific eligibility criteria for free legal services. When someone calls for advice they'll first be screened to see if they meet the criteria.

The Community Immigration Law Clinic, Centro Hispano of Dane County, International Institute of Wisconsin, Sunshine Legal Clinic don't have eligibility criteria, but their capacity is limited to a few hours each week and are first come, first served.

Low-Cost Services

Low-cost Services:

Catholic Multicultural Center of Madison

Call 608-441-0114 - Consults \$0-\$50
Madison, WI. English, Russian, Spanish, Urdu,
and Portuguese. Interpreters available for
other languages.

World Relief of Fox Valley

Call 920-231-3600 - Consults \$50
Oshkosh, WI and Appleton, WI.
Bring your own interpreter.

Civitas Law Group

Call 414-949-5266 - Consults \$20
Milwaukee, WI. English & Spanish

Catholic Charities

Consults \$0-\$50 English and Spanish
Call 608-782-0710 for La Crosse,
Eau Claire, & Wausau
Call 920-272-8234 for Green Bay,
Appleton, & Manitowoc, WI

Centro Hispano Immigration Program

Call 608-255-3018 - Spanish & English
Madison, WI

- There are several legal service agencies in Wisconsin that provide low-cost consults.
- We contacted each of these agencies to ensure they are able and willing to address immigrant's questions about using public benefits.
- The Catholic Multicultural Center and Catholic Charities will charge a \$50 consult fee but will not turn anyone away because of their inability to pay.

Tips-Making a Good Legal Referral

Help individual manage expectations of referral

- Each organization will have their own eligibility guidelines and restrictions.
- Very unlikely individual will receive immediate advice for their question or issue.
- Don't make promises about what an attorney can do!

Develop relationship with referral(s) in your area

- Better understanding of referral capacity to help serve individual.
- Easier referral process for you, and for the individual in need of legal assistance

Top 6 Takeaways About the DHS Public Charge Rule

1. Many programs remain safe for anyone to use.
2. Public charge is not assessed at naturalization or application for U.S. citizenship.
3. If subject of public charge rule, children and pregnant women's use of BadgerCare + and Prenatal Service is not considered.
4. Public charge does not apply to green card holders unless they travel abroad for 6 months or more.
5. Family members use of benefits will not impact the individual's determination.
6. Many immigrants are excluded.

Stay Updated!

For more information and to check for updates, visit:

Wisconsin Collaboration on Immigrants and Public Benefits page:

www.coveringwi.org/immigration

Protecting Immigrant Families (Public Charge):

<https://protectingimmigrantfamilies.org/>

Index

- Benefits for immigrants
- Current state of rules
- Working with families
- Guide
- Legal referrals
- **Questions**

Audience Questions

