



HEALTHY OUTCOMES FOR ALL: ENSURING WIC ACCESS IN THE ERA OF PUBLIC CHARGE

NWA'S MISSION

The National WIC Association (NWA) provides its members with tools and leadership to expand and sustain effective nutrition services for mothers and young children.

For nearly fifty years, the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) has delivered quality nutrition services to improve health outcomes for pregnant and postpartum women, infants, and children up to age 5. WIC's effective nutrition intervention helps grow healthy babies and children, reducing overall healthcare expenditures.

ALL ARE WELCOME

Certain federal programs limit eligibility for non-citizens. Many immigrants must wait at least five years before obtaining eligibility for SNAP benefits, commonly known as food stamps. WIC is one of the few programs that Congress elected *not* to limit eligibility on the basis of citizenship or immigration status. Therefore, nearly all WIC agencies do not inquire as to a participant's immigration status.

Since 2017, WIC clinics across the country have reported a heightened level of fear among immigrant and mixed-status families participating in WIC services, prompting eligible families to refuse to access vital nutrition and breastfeeding support. Due to this fear, families have sought to withdraw from WIC services, returning food benefits and breast pumps to clinic sites.

Hispanic coverage rates declined nationally by 10% in 2017, signaling that fewer eligible Hispanic families are accessing WIC services.¹ Participation has decreased significantly at clinics in high-immigrant communities, with local agencies in at least 18 states reporting a

decline of at least 20% of their caseload.² In New York City, high-immigrant communities reported a 13% higher decline in participation since January 2017 than neighborhoods with a smaller proportion of non-citizens.³ This trend is consistent across all immigrant communities, and immigrant parents of U.S. citizen children have also sought to withdraw their children from WIC services.

WHAT IS PUBLIC CHARGE?

One of the key factors of this chilling effect is public charge: an arcane element of immigration law that may soon be expanded by recent rulemaking at the Department of Homeland Security (DHS). Public charge allows federal authorities to deny legal status to individuals who are determined to rely on government assistance. Individuals determined to be a public charge could be denied a visa or green card. Historically, an individual could be found to be a public charge if they had accessed a limited range of federal benefits – specifically cash assistance (i.e., the Temporary Assistance for Needy Families, or TANF, program) and long-term institutional care under certain Medicaid plans.⁴

WIC IS EXPRESSLY EXCLUDED FROM THE ADMINISTRATION'S FINAL PUBLIC CHARGE RULE.

Public charge review is a forward-looking test, weighing several factors in making an assessment whether the immigrant will rely on federal assistance. Under the test, negatively weighed factors - including prior benefit use - are not necessarily a bar to obtaining legal status. Federal authorities must weigh any negative factors against the totality of the circumstances when coming to a decision on legal status.

Public charge review only occurs at certain stages of the immigration process - namely, when an individual applies for a visa or for a green card. Public charge review does not occur when a legal resident is renewing a green card or when an individual is applying for



STATUS OF PUBLIC CHARGE CHANGES

In August 2019, DHS issued a final rule that expanded the federal programs that could be used in public charge determinations.⁵ This new rule went into effect nationwide on February 24, 2020. The rule would allow the consideration of Medicaid, SNAP, and housing subsidies use – marking a significant expansion of what types of benefits could constitute a public charge finding. WIC is not included in the final public charge rule and is expressly excluded from consideration in public charge determinations.⁶ The rule also clarified that Medicaid use by children under age 21 or pregnant women (up to 60 days postpartum) would not be considered in public charge determinations. Benefit use by family members (including U.S. citizen children) will not be weighed in a public charge review.

In addition to expanding the benefits considered, the new public charge rule puts up a number of other roadblocks that could complicate an immigrant's ability to obtain legal status. The public charge rule encourages federal authorities to weigh income generally, rewarding wealthier families while making it more difficult for low-income families to obtain a green card. Other factors - such as limited English proficiency, significant medical conditions, and even having children - could complicate an immigration petition.

Separately, the State Department issued guidance in January 2018 called the Foreign Affairs Manual (FAM).⁷ The FAM guidance is for embassy and consular officials, as they consider whether to grant visas to foreign nationals seeking to enter the country. Under the January 2018 changes, embassy and consular officials are instructed to weigh any benefit use by the foreign national or their family.⁸ In October 2019, the State Department announced its intention to align the FAM guidance with the DHS rule, but those efforts are stalled pending the ongoing lawsuit.⁹

Although the final DHS rule explicitly excluded WIC from consideration in public charge determinations, the final landscape of immigration policy and regulation is far from settled. WIC agencies continue to report that the chilling effect discourages participation by immigrants or the immigrant parents of U.S. citizen children.

PUBLIC CHARGE PENALIZES IMMIGRANTS FOR ACCESSING CERTAIN PROGRAMS



MEDICAID



HOUSING SUBSIDIES



SNAP



Medicaid for children under age 21 and pregnant women (up to 60 days postpartum) is exempted



WIC is not included in the public charge rule

WIC: EMPOWERING FAMILIES, STRENGTHENING COMMUNITIES

Please direct all questions to NWA at 202-232-5492.

¹ United States Department of Agriculture, Food and Nutrition Service (2019) National- and State-Level Estimates of WIC Eligibility and WIC Program Reach in 2017: Final Report, 31. <https://fns-prod.azureedge.net/sites/default/files/resource-files/WICEligibles2017-Volume1.pdf>.

² Helena Bottemiller Evich, "Immigrants, fearing Trump crackdown, drop out of nutrition programs," *Politico* (Sept. 3, 2018). <https://www.politico.com/story/2018/09/03/immigrants-nutrition-food-trump-crackdown-806292>.

³ Amanda Eisenberg, "WIC enrollment drops in New York City as public charge rule takes effect," *Politico* (Feb. 24, 2020).

⁴ Dep't of Justice, Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689 (Mar. 26, 1999), <https://www.govinfo.gov/content/pkg/FR-1999-05-26/pdf/99-13202.pdf>.

⁵ Dep't of Homeland Sec., Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-08-14/pdf/2019-17142.pdf>.

⁶ *Id.* at 41,388-89.

⁷ Daniella Silva, "Federal appeals court upholds bar on Trump's public charge rule," NBC News (Jan. 8, 2020), <https://www.nbcnews.com/news/latino/federal-appeals-court-upholds-bar-trump-s-public-charge-rule-n1112666>.

⁸ 9 FAM 302.8 (Apr. 22, 2019), <https://fam.state.gov/FAM/09FAM/09FAM030208.html>.

⁹ *Id.* at 302.8-2(B)(2)(f)(1)(b).

¹⁰ Shayna Jacobs, "Lawsuit says Trump's green-card rules show preference for 'the wealthy and the white,'" *The Washington Post* (Dec. 19, 2019), https://www.washingtonpost.com/national-security/lawsuit-says-trumps-green-card-rules-show-preference-for-the-wealthy-and-the-white/2019/12/19/b4cd4fae-2226-11ea-bed5-880264cc91a9_story.html.