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Covid-19 Relief, Federal Benefits and Public Charge: Who is Eligible for What and Will it Matter?

Today's Agenda

- ▶ Covid-19 Relief Laws
- ▶ Health Care
- ▶ Federal Public Benefits and Noncitizen Eligibility
- ▶ Unemployment Compensation
- ▶ Public Charge Implications
- ▶ Things To Keep in Mind

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COVID-19 Relief Laws

- ▶ [Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020](#), an \$8.3 billion emergency funding bill, enacted March 6, 2020
- ▶ [Families First Coronavirus Response Act \(Families First\)](#), enacted March 18, 2020
- ▶ [Coronavirus Aid, Relief, and Economic Security Act, \(CARES Act\)](#) a \$2.2 trillion package to address the coronavirus crisis, enacted March 27, 2020
- ▶ [Paycheck Protection Program and Health Care Enhancement Act](#), enacted April 24, 2020 (PPPHE or COVID #3.5)
- ▶ COVID #4?

Health Care for Immigrants in the COVID Packages

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- ▶ **Medicaid state option to cover testing** for uninsured individuals – but didn't alter immigration restrictions in federal Medicaid
- ▶ **Public Health and Social Services Emergency Fund**
 - ▶ **\$1 billion** to reimburse community health centers, clinics, doctor's offices for testing. No immigration restrictions. (Families First); plus **\$1 billion** (PPPHE)
 - ▶ **\$100 billion** for hospitals, and potentially community clinics, public & private health care providers that serve immigrants regardless of status. (CARES); plus **\$75 billion** to hospitals (PPPHE)

Issues Affecting Access to Health Services for Immigrants

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- ▶ **Eligibility:** Full-scope Medicaid is available only to certain "qualified" immigrants and in many states, lawfully residing children and/or pregnant women
- ▶ **Emergency Medicaid**, other emergency medical services, **public health services** (immunization, testing/treatment of communicable disease symptoms outside of Medicaid), and services at **community clinics** are available regardless of status
- ▶ **Public Charge:** USCIS **clarification** that testing, treatment of COVID-19 will not be considered in a public charge determination even if provided under Medicaid
- ▶ **Privacy and Safety concerns:** ICE reiterated its **sensitive locations** policy

Public Charge: COVID Testing & Treatment

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- Public Charge:** USCIS **clarified** that testing and treatment of COVID-19 will not be considered in a public charge determination even if provided under Medicaid
- ▶ USCIS will not consider testing, treatment, or preventive care (including vaccines, if one becomes available) related to COVID-19 as part of a public charge inadmissibility determination...even if such treatment is provided or paid for by federally funded Medicaid
 - ▶ USCIS will also take the pandemic into account in evaluating other factors relevant to a public charge determination. People who lose their job or access to education, and must use a public benefit due to COVID-19 related factors can submit a letter of explanation

Note: Most immigrants who may be subject to a public charge test are not eligible for the benefits that can be considered in the new test

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ICE Statement on COVID-19

“Consistent with its sensitive locations policy, during the COVID-19 crisis, ICE will not carry out enforcement operations at or near health care facilities, such as hospitals, doctors’ offices, accredited health clinics, and emergent or urgent care facilities, except in the most extraordinary of circumstances. **Individuals should not avoid seeking medical care because they fear civil immigration enforcement.**”

<https://www.ice.gov/news/releases/updated-ice-statement-covid-19#wcm:survey-target-id>



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Nutrition Assistance

- ▶ **Pandemic EBT (P-EBT)** State Option for households with children who would have been eligible for free or reduced priced meals, but lost access due to pandemic-related school closures. Available to SNAP and non-SNAP households.
- ▶ **Additional funding** for child nutrition programs, commodities and emergency food assistance through food banks and other community partners
- ▶ **Eligibility and Public Charge:** Child nutrition programs, like school lunch/breakfast, P-EBT and food banks are available regardless of status, and are not weighed in the public charge test

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Economic Impact Payments (Recovery Rebates)

- ▶ **Advanced recovery tax rebates:** \$1,200 individual/\$2,400 couple, \$500 child
- ▶ **Tax filer** (and spouse if filing jointly) must have an SSN; any child claimed must have an SSN; military families qualify if at least one spouse has an SSN
 - ▶ IRS FAQs clarify that applicants must be currently authorized to work
 - ▶ Must be a USC, LPR or non-citizen who meets the “substantial presence” test ([resident aliens](#))
- ▶ **Most receive EIP automatically** if filed taxes in past two years, or received Social Security or SSI benefits. IRS portal for others who were not required to file taxes in 2018 or 2019.
- ▶ **Leaves out:** individuals and couples filing jointly who use an Individual Taxpayer Identification Number (ITIN) and those not currently authorized to work
- ▶ **Public charge:** tax credits are not weighed in a public charge test

Unemployment Insurance Benefit Programs

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- ▶ **State Unemployment Insurance Programs (UIB)**
- ▶ **Pandemic Emergency Unemployment Compensation (PEUC)** extends *UIB* for additional 13 weeks
- ▶ **Pandemic Unemployment Assistance (PUA)** for workers left out – e.g. self-employed, gig workers, independent contractors, part-time, not enough work history, or exhausted *UIB*
- ▶ **Pandemic Unemployment Compensation (PUC)** \$600 boost to both programs
- ▶ **Immigrant Eligibility:**
 - ▶ **Regular *UIB*** – Must be work authorized when apply, while receiving benefits & during "base period"
 - ▶ **PUA** – No guidance on immigrant eligibility; must be able & available to work under state law
- ▶ **Public charge:** *UIB* is an "earned benefit" that is not counted for public charge purposes

Immigrant Eligibility for Major Federal Benefit Programs

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Immigrant Benefit Classifications

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- ▶ **U.S. Citizens**
- ▶ **"Qualified"** immigrants
 - ▶ Entering the U.S. before 8/22/96
 - ▶ Entering the U.S. on or after 8/22/96
- ▶ **"Not Qualified"** immigrants



"Qualified" Immigrants

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- > Lawful Permanent Residents (LPR)
- > Refugees, Asylees, Withholding of Deportation/Removal, Conditional Entrant status
- > Paroled into U.S. for at least 1 Year
- > Cuban and Haitian Entrants
- > Certain Battered Spouses and Children
- > Certain Survivors of Trafficking

Qualified Battered Immigrants

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With prima facie case or approved:

- > Visa petition filed by US citizen or LPR spouse/parent
- > Self-petition under VAWA, or
- > Application for cancellation of removal/suspension of deportation under VAWA

Parent of battered child and child of battered spouse also considered "qualified"

Survivors of Severe Form of Trafficking

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- > If 18 or over, must be certified by HHS
 - > Children under 18 may get HHS "eligibility letter"
 - > **Eligible for federal benefits to the same extent as refugees**
 - > Derivative beneficiaries of "T" visas are also eligible for federal benefits
- Survivors with approved T visa petitions or prima facie case determinations are "qualified," but other trafficking survivors may also be eligible for benefits

Not Qualified Immigrants

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ALL Other Non-Citizens

... even if have work authorization and are lawfully present in U.S.

For Example:

- ▶ TPS
- ▶ DACA
- ▶ U visa applicants or recipients
- ▶ Adjustment of status applicants

Qualified Immigrants: Major Federal Programs

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- ▶ **Supplemental Security Income (SSI)** severely restricted for immigrants
- ▶ **5-year bar on federal TANF, Medicaid (non-emergency), CHIP** for qualified immigrants who entered U.S. on or after 8/22/96, with exceptions
- ▶ **5-year bar on SNAP (Food Stamps)** for qualified immigrant adults, with exceptions



SSI Eligibility

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- ▶ **Receiving SSI or application pending on August 22, 1996**
- ▶ **Qualified immigrants with disabilities, who were lawfully present in the U.S. on 8/22/96**
- ▶ **LPRs with credit for 40 quarters of work history.** Post 8/22/96 entrants must wait until in qualified status for five years
- ▶ **Refugees, asylees, granted withholding of deportation/ removal, Cuban/Haitian entrants, Amerasian immigrants, Iraqi and Afghan Special Immigrants, trafficking victims, during first 7 years after obtaining status**
- ▶ **Veterans, active duty military, spouses, surviving spouses, & children**
- ▶ **Members of federally recognized Indian tribes or American Indians born in Canada**

Medicaid, CHIP, TANF



Federal funds available for:

- > **Qualified immigrants** who entered U.S. before 8/22/96, or who complete the 5-year bar
- > **Refugee** groups, trafficking victims
- > **Veterans**, active duty military & family
- > **Lawfully residing children & pregnant women in Medicaid/CHIP** (*state option*)
- > **Medicaid:** SSI recipients in most states, federal Foster Care children, Native Americans
- > **CHIP option:** prenatal regardless of status

State variation in coverage

SNAP

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- > **Children** who are qualified immigrants
- > **Adults in qualified status at least five years**
- > **Refugee, asylees**, survivors of trafficking
- > **LPRs with credit for 40 quarters of work**
- > **Veterans**, active duty military, spouse/child
- > Hmong and Laotian tribe members (lawfully present)
- > Receiving disability-related assistance
- > Seniors born before 8/22/31 who were lawfully residing in the U.S. on 8/22/96
- > Native Americans

Public Housing and Section 8



“Eligible” immigrants:

- > Lawful permanent residents
- > Lawful temporary residents
- > Refugees, granted asylum or withholding of deportation/removal, trafficking survivors
- > Parolees
- > Citizens of Micronesia, Marshall Islands, and Palau
- > Qualified battered immigrants

Public Housing and Section 8: Mixed Status Households



- Family may reside in housing if at least one member has an eligible status
- Those declaring an eligible status must provide proof of status and SSNs
- Those choosing not to declare an eligible status are not required to show proof of status or SSN
- Subsidy is pro-rated based on the portion of eligible household members

Andrea

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- Andrea applied to adjust status based on her marriage to a U.S. citizen, but the application is still pending. She has a disability.
- Which of the major federal benefits (SSI, Medicaid, TANF, SNAP, Public Housing) can she receive?
- What if her USC husband is abusive?

Kim and Her Family

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- Kim is a 28-year-old mom with one child, age 6. Both are LPRs who entered the U.S. in 2017. Kim recently lost her job. Her mother came to visit, but decided to remain, overstaying her visitor's visa.
- Is the family eligible for SNAP?
- Can Kim qualify for unemployment benefits?
- Can grandma live with the family in Section 8 housing?

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Public Charge Inadmissibility Test – Which Benefits Can be Weighed?



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Public Charge Ground of Inadmissibility

- ▶ A person deemed *likely to become a public charge* can be denied:
 - ▶ An immigrant or nonimmigrant visa
 - ▶ Adjustment of status, or
 - ▶ Readmission as an LPR if absent for more than 180 days
- ▶ The public charge test analyzes the “totality of circumstances” (age, health, family status, financial status, education/skills, affidavit of support) in determining whether a person is likely to use certain benefits *in the future*
- ▶ Past use of certain benefits can be weighed, *but most applicants subject to a public charge are not eligible for the benefits relevant in the test.*
- ▶ Although non-emergency Medicaid can be counted, USCIS will not consider testing/treatment of COVID-19 even if covered by Medicaid

Public Charge Rules: Benefits

Longstanding Policy

New Rule – If used on or after Feb. 24, 2020

*Cash Assistance for Income Maintenance: State General Relief, SSI, TANF	Supplemental Nutrition Assistance Program (SNAP or Food Stamps)	** Medicaid (with exceptions)
Long Term Institutional Care at Government Expense	Section 8	Public housing

* Included under new policy as well

** Exceptions for emergency Medicaid, coverage of children < 21 and pregnant women

Medicaid Exceptions

- ▶ Medicaid for **emergency services**
- ▶ Medicaid received during **pregnancy** + 60 days post-partum
- ▶ Medicaid received by **children and youth** under 21
- ▶ **School-Based Services**; Services provided under **IDEA** (Individuals with Disabilities Education Act)
- ▶ USCIS: Testing, treatment, preventive care, vaccines related to **COVID-19** <https://www.uscis.gov/greencard/public-charge>
- ▶ DOS: Health services for immunizations and for testing and treatment of **communicable diseases**, 22 CFR § 40.41(c)(3)



Examples of Benefits Not Considered

- **Benefits received by family members**
- Benefits received while in exempt status
- Benefits received by active duty Military & their family members
- Emergency medical assistance
- Medicaid for children <21 or pregnant women (+ 60 days post-partum)
- **Disaster relief**
- **State or local programs** (other than cash assistance)
- Special Supplemental Nutrition for Women Infants and Children (WIC)
- School Breakfast and Lunch
- Energy Assistance (LIHEAP)
- Non-cash TANF benefits
- Earned Income Tax Credit and Child Tax Credit
- Student Loans
- Any other benefits not listed in 8 CFR §212.21(b)

Federal Medicaid Eligibility

- ▶ **Adults: LPRs, Paroled into US, Qualified Battered Immigrants**
 - ▶ who entered U.S. before 8/22/96, or
 - ▶ have been in qualified status for 5 years
- ▶ **Refugees, Asylees, Granted Withholding of Removal, Survivors of Trafficking, Cuban/Haitian entrants, Afghan/Iraqi Special Immigrant Visa Holders, Amerasian immigrants**
- ▶ **Active Duty Military**, spouse & children; **Veterans**, spouse, surviving spouse & children
- ▶ **Lawfully residing Children and Pregnant women**
- ▶ SSI recipients, Federal Foster Care recipients, Native Americans



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Medicaid Considered in Public Charge Test

- > **Adult LPRs** who entered U.S. before 8/22/96, or have been in qualified status for 5 years - *if they seek to reenter after an absence of over 180 days*
- > **Adults Paroled into US** who entered U.S. before 8/22/96, or have been in qualified status for 5 years - *if they seek to adjust status through a non-exempt pathway*
- > **Adults Granted Withholding of Removal and small subset of C/H entrants** - *if they seek to adjust status through a non-exempt pathway*
- > **Veterans**, spouse, surviving spouse & children (if not exempt, etc.)
- > **SSI recipients**, Native Americans (if not exempt, etc.)

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SNAP Considered in Public Charge Test

- > **LPR children, or adults** (in qualified status for 5 years) - *if they seek to reenter after an absence of over 180 days*
- > **Paroled into US: children or adults** (more than 5 years earlier) - *if they seek to adjust status through a non-exempt pathway*
- > **Persons Granted Withholding of Removal and small subset of C/H entrants** - *if they seek to adjust status through a non-exempt pathway*
- > **Veterans**, spouse, surviving spouse & children (if not exempt, etc.)

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Who Gets Public Housing or Section 8 that Would Count in a Public Charge Test?

- > **LPRs** – *if they seek to reenter after an absence of over 180 days*
- > **Paroled into US** – *if they seek to adjust status through a non-exempt pathway*
- > **Granted Withholding of Removal** – *if they seek to adjust status through a non-exempt pathway*
- > **Citizens of Micronesia, Marshall Islands, and Palau** – *if they leave the US and seek to reenter or if seek to adjust status through a non-exempt pathway*

Clare, Mike, Tyler and Eric

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- ▶ **Clare, who is undocumented, has two children: Mike, an undocumented teenager, and Tyler, who was born in the U.S. Clare is pregnant. She is planning to marry Eric, who is an LPR. The family earns 100% FPG.**
 - ▶ Are they eligible for any federal benefits?
 - ▶ Do they need to worry about public charge?
 - ▶ Will their use of these benefits count in the public charge determination?

Julia

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- ▶ Julia divorced her husband, an LPR who abused her and her two children. She filed a self-petition under the VAWA, which was approved 2 years ago. She does not yet have her green card.
- ▶ Do Julia and her children qualify for TANF, SNAP or Medicaid?
- ▶ If so, should they worry about applying?

Things to Keep in Mind

- ▶ **Some immigrants are NOT subject to public charge**
- ▶ **Most immigrants who are subject to public charge are not eligible for the benefits counted in the new test.** Using benefits can help you or your family members become healthier, stronger and more employable in the future
- ▶ **Negative and positive factors are weighed.** A client with a negative factor (e.g., low income, no high school diploma) may be able to overcome public charge by showing positive factors (job skills, age, health insurance)
- ▶ **Advise clients to start preparing now.** Pay any back income taxes, enroll in health insurance, improve English skills, improve credit rating, get job offers

Resources on Immigrant Eligibility for Benefits and Services

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- ▶ **NILC:** [Summary](#) of Families First Act's health provisions
- ▶ **NILC:** [Understanding the Impact of Key Provisions of COVID-19 Relief Bills on Immigrant Communities](#)
- ▶ **PIF:** [Quick Guide: Immigrant Eligibility for Public Programs During COVID-19](#)
- ▶ **NELP:** [Immigrant eligibility for UIB](#) and [fact sheet](#) on new programs in CARES
- ▶ **NELP, NILC, OSH Law Project:** [Immigrant Workers' Rights and COVID-19](#)
- ▶ **NILC:** [Immigrant Eligibility for Federal Benefits](#) and [State-funded Benefits Tables](#)

Resources on Public Charge & Sensitive Locations

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- ▶ **CLINIC:** [Practitioner Resources on Public Charge](#)
- ▶ **PIF:** Public Charge [Analysis and Research](#)
- ▶ **PIF:** Public Charge [Know Your Rights](#)
- ▶ **NILC:** [Public Charge Resources](#)
- ▶ **PIF:** ["Sensitive Locations Policies" Fact-Sheet](#)
- ▶ **USCIS:** [Clarification that COVID-19 Testing & Treatment will not be Considered in a Public Charge Determination](#)
- ▶ **ICE:** [Statement on COVID-19 re Sensitive Locations](#)
- ▶ **ICE:** [FAQ on Sensitive Locations](#)
- ▶ **NILC:** [Tips on reporting Sensitive Locations violations](#) or contact us at SafeSpacesAlerts@nilc.org
- ▶ **NILC:** [General KYR resources](#)
