

Date of Hearing: March 12, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

ACR 1 (Bonta) – As Amended March 6, 2019

SUBJECT: Immigration: public charges

SUMMARY: Declares Legislative condemnation of proposed federal regulatory changes related to “public charge” determination for purposes of immigration admissibility and status-adjustment decisions and, further, declares that the Legislature urges the federal government to reconsider and roll back the proposed changes. Specifically, **this resolution:**

- 1) Makes a number of findings and declarations related to proposed federal regulations regarding public charge determination, including the following:
 - a) The authority, under the Immigration and Nationality Act, for an individual seeking admission to the United States to be deemed inadmissible, or an individual seeking to adjust immigration status and obtain lawful permanent residence to be denied permanent residence, if the individual is likely at any time to become a public charge;
 - b) Consideration of factors, under current guidelines for making a public charge determination, being limited to certain cash assistance and programs;
 - c) The Department of Homeland Security’s notice about proposing new regulations regarding public charge determinations, published in October 2018, that significantly expands the list of benefits to be considered when making such determinations and considers whether immigrants use programs related to health and well-being in deciding whether to deny an immigrant entry into the United States or lawful permanent residence;
 - d) The importance of health care access, housing, and nutrition assistance for all people, the importance of investing in essential needs, and the threats posed to individuals seeking eligibility for a green card if they live below a certain income level or access certain public assistance programs;
 - e) The 10 million immigrants who live in California, comprising 27% of the state’s population, and the economic contribution these individuals make to local, state, and federal economies;
 - f) The proposed regulations single out immigrant families; threaten to contribute to lost economic output; create an income threshold when making public charge determinations, targeting low-income working immigrants and disproportionately affecting people of color and low-wage laborers; and take into consideration English proficiency, thereby singling out immigrants with limited English proficiency;
 - g) California is stronger when residents in need are able to access its safety net without fear for themselves, their family, or their future;
 - h) Half of children in California have a least one immigrant parent, and over 70% of the individuals affected by the proposed regulations are children;

- i) Low-income children of immigrant parents are already less likely to receive SNAP or Medicaid than are children whose parents were born in the United States, and federal law currently denies many immigrants access to federal assistance programs;
 - j) California recognizes the value of safety net services and has proactively responded to unjust federal restriction, has expanded access to full-scope Medi-Cal to certain immigrant populations, and has ensured access to critical safety net assistance for some Californians excluded by federal policies;
 - k) The negative effects that the fear of being deemed a public charge – and therefore, facing certain immigration consequences, including deportation – has had on immigrant Californians; and,
 - l) The proposed federal regulations go counter to the state’s values and bipartisan efforts that recognize the significance and value of integrating immigrant populations into the state.
- 2) Resolves by the Assembly, and the Senate thereof concurring, that the Legislature:
- a) Condemns the proposed federal regulatory changes, which undermine the state’s critical safety net programs and the well-being of communities; and,
 - b) Urges the federal government to reconsider and roll back the proposed changes, which stand to harm the well-being of the state and nation well into the future.
- 3) Resolves that the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, to each Senator and Representative from California in the Congress of the United States, and to the author for appropriate distribution.

EXISTING LAW:

- 1) Establishes the federal Immigration and Nationality Act, governing immigration to and citizenship in the United States. (8 United States Code [USC] Section 1101 *et seq.*)
- 2) Delineates categories of noncitizens who are ineligible to receive visas and ineligible to be admitted to the United States, including, among others, as specified: health-related grounds such as having a communicable disease of public health significance; criminal and related grounds; security and related grounds; public charge; documentation requirements; and others. (8 USC 1182 (a))
- 3) States that a noncitizen who, in applying for a visa, admission, or adjustment of status, is likely at any time to become a public charge is inadmissible, and delineates factors to be considered in this determination, including: age; health; family status; assets, resources, and financial status; and education and skills. (8 USC 1182 (a)(4))

FISCAL EFFECT: This resolution has been keyed non-fiscal by the Legislative Counsel.

COMMENTS:

“Public charge” inadmissibility: The Immigration and Nationality Act delineates categories of noncitizens who are ineligible to receive visas and ineligible to be admitted to the United States for certain reasons (8 USC 1182 (a)). These reasons include, among others, health-related grounds such as having a communicable disease of public health significance, criminal and related grounds, security and related grounds, and documentation requirements. They also include designation as a public charge. The Immigration and Nationality Act (8 USC 1182 (a)(4)) establishes that a noncitizen who, in applying for a visa, admission, or adjustment of status, is likely at any time to become a public charge is inadmissible, and establishes factors to be considered in this determination, including: age; health; family status; assets, resources, and financial status; and education and skills.

Further instruction is offered in a 1999 memo from the (former) Immigration and Naturalization Service (INS), entitled “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds.” This memo states that:

“‘public charge’ means [a noncitizen] who has become (for deportation purposes) or who is likely to become (for admission/adjustment purposes) ‘primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense.’ Institutionalization for short periods of rehabilitation does not constitute such primary dependence.”

This 1999 memo goes on to specify that cash assistance and government-funded institutionalization for long-term care that could be considered for public charge purposes include: Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF, or California Work Opportunity and Responsibility to Kids [CalWORKs] in California), state and local cash assistance programs that provide benefits for income maintenance (typically called “General Assistance” – and in California, sometimes “General Relief” – programs), and programs (including Medicaid, or Medi-Cal in California) that provide for long-term institutionalization to provide care in settings such as a nursing home or mental health facility. Additionally, the memo stipulates that past or current receipt of the specified cash benefits did not necessarily deem a noncitizen to be either inadmissible or deportable as a public charge; instead, receipt of these benefits was to be taken into account under the “totality of the circumstances” test for purposes of admission or adjustment of status.

The INS memo also states that “it is not possible to list all the supplemental non-cash benefits or special-purpose cash benefits that [a noncitizen] may receive that should not be considered for public charge purposes,” and lists as common examples 11 main programs, including: Medicaid; Children’s Health Insurance Program (CHIP); nutrition programs such as food stamps (now called the Supplemental Nutrition Assistance Program, or SNAP), the the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and the National School Lunch and School Breakfast Program; housing benefits; child care services; energy assistance; emergency disaster relief; foster care and adoption assistance; educational assistance, including Head Start and aid for elementary, secondary, and post-secondary schooling; job training programs; and in-kind, community-based programs or assistance.

Proposed rule changes regarding public charge determination: On October 10, 2018, the Department of Homeland Security issued a notice of proposed rulemaking which, in 183 pages,

proposed a number of regulation changes regarding inadmissibility on public charge grounds. Some of the key changes proposed include:

- Expanding the number and type of programs that would be considered in public charge determination to include certain health, nutrition, and housing programs, such as, among others, Medicaid, SNAP, Section 8 Housing Voucher and Rental Assistance programs.
- Stating that a person may be considered to be or likely become a public charge if they receive one or more public benefits. (The current rule is that a person may be or likely become a public charge if they are *primarily dependent* on public benefits.)
- Considering specific income levels by weighting income below 125% of the Federal Poverty Level (FPL) as a negative factor, and income over 250% of the FPL as a heavily positive factor. (The current rule is that assets, resources, and financial status may be considered as one factor among the totality of circumstances.)
- Establishing negative factors and heavily-weighted negative factors to be considered in public charge determination, including: age of individual (with being under 18 and over 61 weighted as negative); absence of current employment or employment history, and lack of reasonable prospect of employment (a heavily negative factor); current receipt or use of one or more public benefits in the past 36 months (a heavily negative factor); and a medical condition and lack of private health insurance or other non-subsidized means of paying for healthcare (a heavily negative factor), among others.

Need for this bill: By the time the 60-day comment period regarding the proposed changes to public charge rules came to an end, approximately 200,000 comments had been registered. A report by the Kaiser Family Foundation stated that approximately 94% of noncitizens who entered the U.S. without legal permanent resident status have at least one characteristic that could possibly weigh negatively in public charge determination per the proposed changes. Many stakeholders argue that uncertainty and anxiety among immigrant families resulting from learning about the proposed rule may very well reduce enrollment in crucial public assistance programs. The Kaiser Family Foundation estimates that, if the rule has this effect and leads to disenrollment rates between 15% and 35% of Medicaid and CHIP enrollees who live with a noncitizen, the result would be that between 2.1 million and 4.9 million Medicaid/CHIP recipients would disenroll.

A number of stakeholders writing in support of this resolution point to an array of negative impacts that the proposed changes may have on immigrants and their families, and communities as a whole. For example, the Los Angeles Unified School District points to the impact on students and their families, stating that, “L.A. Unified’s mission is to ensure academic achievement so that each and every student graduates college and [is] career ready. If the proposed rule is adopted, families, including those who have U.S. citizen children could be dissuaded from utilizing health, food, and housing benefits, due to concerns that their receipt of benefits would put their family members’ immigration status at risk. The proposed rule will impair L.A. Unified’s goal by not only impacting the health and well-being of our immigrant students, but it will also have far-reaching consequences on student achievement. Ensuring that students are afforded services including nutritious food, safe and stable housing, and adequate health care helps enable them to become employable, attend higher-education, and be productive contributors to American society.”

The California Behavioral Health Directors Association of California (CBHDA) states that, “This Proposed Rule will impact legal immigrant communities significantly who are already struggling to make ends meet. Immigrants contribute to stronger communities and stronger local economies. The increased level of fear and anxiety caused by this change may deter many from accessing public programs that they and their children are eligible for, regardless of being directly affected by the policy change. Immigrant populations already show higher levels of stress, anxiety, and depression. These individuals will need more mental health and substance use disorder services, but may not access them for fear of risk to their immigration status or that of a family member. Patients are likely to drop off Medicaid, fail to seek food for their family through SNAP, or receive public housing supports for fear of not being able to stay in the country.”

And the Association of Regional Center Agencies (ARCA) writes that, “The extent to which this proposal will have a chilling effect on access to critical services, particularly those that have life-long positive impacts through early intervention, cannot be overstated. This proposal is likely to reduce access to, and utilization of, developmental disability services regardless of the individual’s immigration or citizenship status. While this proposal technically applies to (primarily) non-citizens seeking permanent resident status, it will have a significant adverse impact on individuals and families who are entitled to services without an immigration penalty. As seen following the 1996 welfare reform, utilization of both public assistance and SNAP decreased due to misinformation in populations that were still eligible. California strives to ensure people with developmental disabilities can live full, productive, integrated lives, encouraging self-sufficiency and family support as much as possible. Supporting families ensures that parents of individuals with developmental disabilities are not required to become full-time caregivers because of lack of support due to fear of federal immigration consequences. Many families draw on the support and assistance of their wider nuclear family. By creating a barrier to services, there will be an immediate impact on the ability of the larger family to work outside the home – and remain productive members of their communities whose work supports their loved ones. We as a society are better when families receive services and supports to help them balance the extra responsibilities that come with having a loved one with a developmental disability.”

According to the author, “Over the last two years the Trump administration has proven itself to be the polar opposite of what we stand for here, where we fight for justice, inclusion, equity and opportunity. This latest move is an attack on Californians’ health and well-being. Health care access, housing, and nutrition assistance programs help all people and their families stay healthy, work, thrive, and contribute to society. Here, in California, we have the largest immigrant population in the nation; nearly 1 in 2 children have at least one immigrant parent. The proposal is already having its intended effect by increasing the fear of immigrant families to access government programs. These fear tactics will exacerbate serious problems such as hunger, unmet health needs, child poverty, and homelessness, with lasting negative consequences for families’ and our state. California is stronger when residents in need are able to access the social safety net without fearing for the safety of themselves or their families. Community members should continue to seek vital programs and services they qualify for.”

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California
Association of Regional Center Agencies
California Association of Food Banks
California Food Policy Advocates
California Immigrant Policy Center
California Pan - Ethnic Health Network
Californiahealth+ Advocates
Children And Families Commission of Los Angeles County
Children's Defense Fund - California
Coalition for Humane Immigrant Rights
County Behavioral Health Directors Association
County of Monterey
Disability Rights California
Inland Coalition for Immigrant Justice
Justice in Aging
Los Angeles Unified School District
National Immigration Law Center
Western Center on Law & Poverty, Inc.

Opposition

None on file

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