

Trump's Executive Orders and Immigrants' Access to Health, Food, and Other Public Programs

Things to Keep in Mind When Talking with Immigrants

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Since President Donald Trump's inauguration in January 2017, his actions on immigration have caused tremendous fear in immigrant communities, undermining trust in government programs and chilling access to health, food, and other critical benefits and services.

Trump's reign of terror on immigrants—imposed through his executive orders (EOs) on immigration, including a draft EO that was leaked to the media but has not been finalized or signed, and through aggressive immigration enforcement actions in immigrant communities—is already causing lasting damage. We have heard numerous reports of immigrant families, afraid to seek services they or their U.S. citizen children need, disenrolling from critical programs and afraid to continue treatment for serious illnesses.

At NILC, we are vigilantly monitoring the Trump administration's changes to existing policy. This publication is intended to clarify what *has* and has *not* changed with respect to the rules and policies that affect immigrants' access to health, nutrition, and other critical programs. We invite you to use it as a resource when you speak with immigrants and immigrant families.

Key basic points

- **Laws and policies about immigrants and public benefits have not changed.** Executive orders signed by Trump that reference or implicate public benefits have mostly restated existing law and policy. The draft executive order on “public charge,” which could make it harder for low-income immigrants who use certain benefits to enter the country or obtain a green card (lawful permanent residence), was leaked to the media but has *not* been finalized or signed by Trump.¹ (See the next section for more information on how to talk about this draft EO.)
- **Immigrants should not misrepresent information when completing public benefit applications or dealing with any government agency.** [Trump's executive order on immigration enforcement](#),² which targets virtually all undocumented immigrants

¹ See “Five Things You Should Know About the Draft Executive Order on Public Benefits,” *The Torch* (NILC's blog), Feb. 16, 2017, www.nilc.org/news/the-torch/2-16-17/, and this NILC video: www.facebook.com/NationalImmigrationLawCenter/videos/1468624999846689/.

² *Executive Order: Enhancing Public Safety in the Interior of the United States* (The White House, Jan. 25, 2017), www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united.

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for removal, warns that “abuse” related to receipt of public benefits may make someone a priority for enforcement. The U.S. Department of Homeland Security (DHS) [defined this](#) as “hav[ing] *knowingly* defrauded the government or a public benefit system.”³ We always have advised immigrants to avoid any misrepresentations when applying for or using public benefit programs, since this causes problems with benefit agencies and Immigration.⁴

- **Federal and state laws that protect the privacy of people who apply for or use health, public benefit, or economic support** (e.g., tax credits administered by the Internal Revenue Service) **programs remain in place.** The EO on immigration enforcement declares that the Privacy Act, a federal law that safeguards individuals’ information in government databases, applies only to U.S. citizens and lawful permanent residents. But the Privacy Act by its own terms has always applied only to these two groups, although some agencies have applied it to systems more broadly.

But this EO did not change the independent federal and state laws that continue to protect the confidentiality of health and benefit recipients and their family members. In general, Medicaid, health insurance obtained under the Affordable Care Act (ACA or Obamacare), SNAP (food stamps), and other public programs may collect only information necessary to determine eligibility for those programs. And they may share information with other government agencies only so they can administer their programs.

The draft executive order on immigrant “accountability and responsibility”

NOTE: As of this document’s publication date, the [leaked draft executive order](#) titled “Executive Order on Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility” has *not* been finalized or signed.⁵ The leaked draft was reported on by *Vox* on Jan. 25, 2017.⁶

If signed in its leaked form, this EO would dramatically alter several policies related to immigrants’ receipt of public benefits and their ability to enter the U.S., obtain lawful permanent residence (a green card), and rise out of poverty. It would discourage U.S. citizens and green card–holders from sponsoring family members to immigrate, putting the brakes on family-based immigration. Lawfully residing immigrants who are struggling to make ends meet would be afraid to seek critical services. The proposed changes to existing policy are extreme indeed.

³ “Q18: What threshold of abuse of a public benefit program will render someone removable?,” *Q&A: DHS Implementation of the Executive Order on Enhancing Public Safety in the Interior of the United States* (U.S. Dept. of Homeland Security, Feb. 21, 2017), www.dhs.gov/news/2017/02/21/qa-dhs-implementation-executive-order-enhancing-public-safety-interior-united-states (emphasis added).

⁴ For more information, see “Unpacking the References to Public Benefits and the Privacy Act in Trump’s Executive Order on Interior Enforcement,” *The Torch*, Mar. 2, 2017, www.nilc.org/news/the-torch/3-2-17.

⁵ A copy of the leaked EO is available at https://cdn3.vox-cdn.com/uploads/chorus_asset/file/7872571/Protecting_Taxpayer_Resources_by_Ensuring_Our_Immigration_Laws_Promote_Accountability_and_Responsibility.o.pdf.

⁶ “Read Leaked Drafts of 4 White House Executive Orders on Muslim Ban, End to Dreamer Program, and More,” *Vox*, Jan. 25, 2017, www.vox.com/policy-and-politics/2017/1/25/14390106/leaked-drafts-trump-immigrants-executive-order.

However, we don't know if this draft EO will be issued or what its final language will look like. The draft EO directs agencies to initiate formal rulemaking to implement some of the proposed changes, providing time and an opportunity for public comment before some changes would go into effect. Finally, a president's policy changes are always still limited by existing statutes, and only Congress can change these laws.

Concerns about being found to be a “public charge”

While some potential changes outlined in the draft EO would take a while to implement, the EO calls for immediate changes to the “public charge” determination.

- Public charge is a ground of inadmissibility that has existed for over 100 years. Immigrants who are seeking to enter the U.S. or to get a green card must show that, based on all their circumstances, they are not likely *in the future* to rely on the government for subsistence.
- The public charge statute—which cannot be changed by an executive order—requires immigration officials to look at all factors that relate to individuals' ability to support themselves, including their age, health, income, assets, resources, education/skills, family to support, and family who will support them (i.e., whether a sponsor has signed an affidavit of support on their behalf).
- Since the test looks at the person's overall circumstances, no one factor is definitive. Any negative factor, such as not having a job, can be overcome by positive factors, such as having completed training for a new profession.
- Under current rules, the government can also consider cash benefits or institutionalization at government expense (e.g., long-term care paid for by Medicaid) in this test. The leaked draft EO would add other, unspecified benefits that could be considered in the “totality of the circumstances” public charge test.

But even if the EO were signed in its leaked form, under the statute...

- **Some immigrants are not subject to the public charge determination.** The following categories of noncitizens do not have to establish that they're not likely to become a public charge: refugees; asylees; survivors of trafficking, domestic violence, or other serious crimes; VAWA self-petitioners; special immigrant juveniles; and certain parolees.⁷ Even if the leaked draft of the EO were signed, these individuals can use government benefits and programs for which they are eligible without hurting their chances of getting a green card.
- **Public charge is not a consideration in qualifying for naturalization.** Lawful permanent residents applying for citizenship are not subject to a public charge test.
- **Public charge is a future-looking, “totality of the circumstances” test.** People immigrating through family-based petitions would still be able to show that other factors make them unlikely to become a public charge in the future. Their use of health care, which

⁷ For the full list, see *Federal Guidance on Public Charge: When Is It Safe to Use Public Benefits?* (NILC, Aug. 2014), www.nilc.org/wp-content/uploads/2015/12/public-charge-nat-2014-08-08.pdf, p. 4.

allows them to maintain their health and ability to work and support their families, could make them *less* likely to need assistance in the future.

- **The grounds for deporting an immigrant based on public charge are extremely narrow.** They would apply only to lawfully residing immigrants who use public benefits during their first five years in the U.S. for reasons that existed before they came to the U.S.⁸ People who need benefits based on something that came up after they entered would not have a problem—for example, pregnancy, an accident, or a job loss.

People who need health care or other safety-net benefits should use them

- **There may be no advantage to disenrolling from a program.** People who have used benefits will need to list them on the application for lawful permanent residence. Yet getting critical services could help them remain healthy, strong, and able to work productively. People who apply for a green card can show evidence of all factors demonstrating that they are not likely to become a public charge in the future.
- **People can assess potential risks based on their individual circumstances.** Some people who have immediate or significant medical needs may have little or no prospect of getting a green card—and they may decide it is more important to take care of their needs. When talking to an immigrant about this issue, have information handy about where the person can find free or low-cost help with their immigration case (such as www.immigrationadvocates.org/nonprofit/legaldirectory/), so they can get the information they need to decide what the best course would be for them. Similarly, a person who has applied for their green card and whose adjustment or green card interview is approaching, but who has no urgent health needs, may wish to consult with an immigration attorney or Board of Immigration Appeals–accredited representative before seeking public benefits.
- **Fight back!** Public benefits such as Medicaid, the Children’s Health Insurance Program (CHIP), and SNAP serve the public good and the community interest of improving general health and nutrition, promoting education, and assisting working low-income families in the process of becoming self-sufficient. Everyone does better when we are all able to contribute.
- **Document the impact!** NILC wants to know about people who are avoiding needed services because of fears related to the leaked EO. Please share these stories at publiccharge@nilc.org.



This document provides the information NILC has as of its publication date.

Updated information will be available from our website, www.nilc.org, as it becomes available.

⁸ *Id.*, p. 5.