

Health Care Practice Tip – February 2020

Public Charge and Health Insurance in California

This Practice Tip does not provide immigration advice.

Beginning February 24, 2020, the new public charge rule used for immigrants entering the country or applying for permanent residency takes a close look at health insurance. But it does not penalize *all* immigrants for *all* kinds of coverage. For example, did you know that Medi-Cal is most often *not* counted?

Medi-Cal does not negatively affect most immigrants for two reasons: (1) many immigrants are not subject to the public charge rule, and (2) the rule's several exceptions exclude Medi-Cal for many immigrants.

This Practice Tip focuses on the second reason – all of the ways that the rule does not penalize applicants for receiving Medi-Cal and health insurance.¹ Finally, it explains how having health insurance (including Covered California and some types of Medi-Cal) is better than being uninsured under the rule.

When does the rule negatively count Medi-Cal against an immigrant?

Since May 1999, the public charge rule has negatively counted institutionalization at Medi-Cal's expense, such as Medi-Cal long-term care (LTC) and a long-term stay at a mental health institution.² The new rule still counts this limited Medi-Cal coverage as a negative factor, including if an immigrant received it before February 24, 2020.³

Beginning February 24, 2020, the rule negatively counts Medi-Cal more generally, but with several expansive exclusions. First, Medi-Cal can be a heavily-weighted negative factor *only if* authorized under 42 U.S.C. § 1396 *et seq.*, funded by federal sources, and not excluded.⁴ So the rule does not count Medi-Cal for these categories:

- (1) **Restricted-scope Medi-Cal covering only emergency medical conditions, including kidney dialysis and medically-necessary long-term care.**⁵ This includes immigrants without documentation in restricted-scope Medi-Cal aid codes.
- (2) **Medi-Cal for children under age 21.**⁶ This includes immigrant children in a variety of full-scope Medi-Cal aid codes.
- (3) **Medi-Cal for pregnant women, including the postpartum period that ends on the last day of the month that includes the 60th day after the pregnancy ends.**⁷ This includes the several pregnancy-scope Medi-Cal aid codes and the Medi-Cal Access Program (MCAP).⁸
- (4) **Medi-Cal services provided at schools, community colleges, and universities for students up to age 22.**⁹ This includes assessments and treatments for a student's Individual Education Program (IEP) such as counseling, targeted case management, nursing services, occupational therapy, physical therapy, speech therapy, audiology, and transportation.
- (5) **Medi-Cal funded entirely by California state revenues.**¹⁰ This includes several Medi-Cal eligibility categories – not always identifiable by existing aid codes – that we describe in detail below.



Photo of an arm in a cast with the words "Enroll Now!" and "Health and Justice 4 All." (Image courtesy of The California Endowment)

Which Medi-Cal programs are excluded from the public charge rule?

State-funded Medi-Cal is not easy to identify. For example, the recent expansions of Medi-Cal eligibility to children and all young adults *using only state funds* led to thousands of immigrants with full-scope Medi-Cal under aid codes shared with lawfully-present beneficiaries (M1, M5, P5, P7, P9, T1, T2, T3, T4, T5, etc.). Here is a list of Medi-Cal groups and programs (and related health programs) that the public charge rule *does not count* because they are state funded or outside the scope of 42 U.S.C. § 1396 *et seq.*:

Entirely state-funded Medi-Cal programs:

- Medi-Cal for all children (SB 75) – full-scope eligibility under age 19.¹¹
- Medi-Cal for all young adults (SB 104) – full-scope eligibility under age 26.¹²
- Minor consent Medi-Cal – limited services for kids under age 21 without parental consent or notification.¹³
- Trafficking and Crime Victims Assistance Program (TCVAP) – full-scope eligibility for survivors of human trafficking, domestic violence or other crimes.¹⁴
- Hospital Presumptive Eligibility (HPE) – only when provided to exempt immigrant groups.¹⁵
- Medi-Cal restricted to anti-rejection medication coverage for organ transplant patients.¹⁶
- Medi-Cal special treatment programs for provide kidney dialysis or parenteral hyperalimentation for beneficiaries otherwise ineligible for Medi-Cal.¹⁷

Health programs outside of the scope of 42 U.S.C. § 1396 *et seq.*:

- Medi-Cal Access Program (MCAP) – full-scope services to pregnant women with incomes over 213% through 322% FPL regardless of immigration status.¹⁸
- Child Health & Disability Program (CHDP) – medical health screens, immunizations and medical treatment to children and youth.¹⁹
- Every Woman Counts (EWC) – breast and cervical cancer screening and diagnostic services administered by DHCS.²⁰
- California Children’s Services (CCS) – only for beneficiaries ineligible for Medi-Cal.²¹
- Breast and Cervical Cancer Treatment Program (BCCTP) – treatment and related services only for beneficiaries determined ineligible for federal BCCTP.²²
- Medi-Cal refugee assistance – full-scope eligibility for recently-arrived refugees.²³
- Medicare, including Part D and the Low-Income Subsidy (LIS).²⁴
- County indigent health programs (My Health LA, CMSP, etc.) – safety-net health care services to persons with no other means to get care.²⁵
- VA and TRICARE – health coverage for veterans.²⁶
- Public health services – such as immunizations.²⁷
- AIDS Drug Assistance Program (ADAP) – state-administered program that provides FDA-approved medications to low-income people living with HIV.²⁸
- Ryan White HIV/AIDS Program – primary care, support services, and medications for people living with HIV.²⁹
- Title X programs.
- Covered California – including plans purchased with or without state and federal APTCs.³⁰
- Indian Health Program.
- Major Risk Medical Insurance Program (MRMIP).

What about beneficiaries who complete Form MC-13?

Looking at just a beneficiary’s selection on [Form MC-13](#) does not always provide a definitive answer on whether their Medi-Cal counts under the new public charge rule. Instead, advocates should follow three steps:

- (1) Determine whether the beneficiary is a qualified immigrant receiving federally-funded Medi-Cal.³¹
- (2) If the beneficiary is a qualified immigrant, determine whether they are exempt from the public charge rule.³²

- (3) If they are not exempt from the public charge rule, determine whether they receive an excluded form of federally-funded Medi-Cal under public charge (see above regarding emergency services, pregnancy services, and services for children under age 21).

By following these steps, you should find that in many cases Medi-Cal for most qualified immigrants is exempt. Remember that many Medi-Cal beneficiaries who complete Form MC-13 are *not* qualified immigrants, so they do not receive federally-funded Medi-Cal.

How else does the public charge rule exclude Medi-Cal?

Even if you cannot find a way to exclude Medi-Cal under the several categories above, the public charge rule should not count it for military families, some children of U.S. citizens, and when immigrants received benefits while in a category exempt from public charge.

- **Military families:** The new rule excludes all benefits (including Medi-Cal) received by a person enlisted in the U.S. armed forces or serving in active duty or in the Ready Reserve, including benefits received by the service member's spouse and child(ren), when the service member was enlisted or active "at the time of receipt of the public benefit, or at the time of filing or adjudication of the application for admission or adjustment of status, or application or request for extension of stay or change of status."³³
- **Children of U.S. citizens:** The rule does not count any public benefit received by children of U.S. citizens who automatically become citizens due to their parents' citizen status and/or adoption by citizen parents, or if the children have a citizen parent and seek admission to attend an interview.³⁴
- **Exempt from public charge or granted a waiver:** Medi-Cal and other benefits do not count if received while an immigrant is exempt from public charge or granted a public charge waiver.³⁵ For more information about the exempt categories of immigrants, see [ILRC's Practice Advisory: Public Charge Exemptions and Considerations \(December 2019\)](#).

When can health insurance be a positive factor under public charge?

Surprise! The new public charge rule counts some types of health insurance (including some Medi-Cal) as at least a positive factor. **Remember:** Covered California with or without any federal and state tax subsidies is not a countable public benefit in any negative way.³⁶

Coverage types that are **heavily-weighted positive factors:**³⁷

- Covered California *without* federal tax credits.³⁸
- Covered California *with only* state tax credits (above 400 percent FPL).³⁹
- Private health insurance purchased outside of Covered California.
- Employer-provided health insurance, including through government employment.
- Medicare.
- Health insurance subsidized by a foreign country.

Coverage types that are **plain positive factors:**⁴⁰

- Covered California *with* federal tax credits.
- Medi-Cal for children under age 21.
- Medi-Cal for pregnant women, including the postpartum period.

The specific cost-sharing of Covered California and private insurance may matter. [USCIS guidance](#) instructs officers to give less positive weight to "health insurance with a high deductible or other cost-sharing costs" without further specifics.⁴¹

How will immigrants report Medi-Cal on immigration applications?

Instructions to [USCIS Form I-944](#) (Declaration of Self-Sufficiency) direct certain immigrants to report federally-funded Medi-Cal.⁴² Form I-944 itself includes a checkbox only for “Federal-Funded Medicaid.”⁴³

Public Benefits

Provide the requested information and submit documentation, as outlined in the Instructions. If you need additional space to complete any **Item Number** in this Part, use the space provided in **Part 9. Additional Information**.

16. Have you **EVER** received, or are currently certified to receive in the future any of the following public benefits? (select **all** that apply).

Yes, I have received, or I am currently certified to receive in the future the following benefits:

- Any Federal, State, local or tribal cash assistance for income maintenance
- Supplemental Security Income (SSI)
- Temporary Assistance for Needy Families (TANF)
- General Assistance (GA)
- Supplemental Nutrition Assistance Program (SNAP, formerly called "Food Stamps")
- Section 8 Housing Assistance under the Housing Choice Voucher Program
- Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation)
- Public Housing under the Housing Act of 1937, 42 U.S.C. 1437 et seq.
- Federal-funded Medicaid**

No, I have not received any public benefits.

No, I am not certified to receive in the future any of the above public benefits.

17. Have you disenrolled, withdrawn from, or requested to be disenrolled from the public benefit(s)? Yes No

Screenshot of page 8 of USCIS Form I-944 showing the option for immigrants to report only “Federal-funded Medicaid” (highlight added).

USCIS guidance states that immigrants are “not required to report the receipt of the state-only funded health insurance.”⁴⁴ If an immigrant happens to list Medi-Cal, it’s their burden “to provide information and documentation that the health insurance is state funded only. USCIS assumes that any Medicaid identified on the Form I-944 is federally-funded Medicaid.”⁴⁵

NOTE: To the extent that States give the same name to their Federal Medicaid program and the state-only funded health insurance program, aliens will not be required to report the receipt of the state-only funded health insurance.

Screenshot of page 9 of Instructions for Form I-944 showing the clarification that reporting state-funded Medi-Cal is not required (highlight added).

Despite our requests, DHCS has no plans to provide verifications of state-funded Medi-Cal, even if beneficiaries request them. We continue to advocate for DHCS to clarify Medi-Cal funding sources and will update this Practice Tip if anything changes.

Where can I find more information about the new public charge rule?

The following resources are excellent sources of more details about public charge:

- [Protecting Immigrant Families Campaign \(Analysis & Research\)](#)
- [National Immigration Law Center](#)
- [Immigrant Legal Resource Center](#)

Want to know more? Or have questions about whether the rule counts some other health program? Please contact [Jen and David](#) so we can help.

¹ This Practice Tip discusses only the health insurance provisions of the public charge rule. It does not provide guidance on any of the rule's other factors, such as age, health, education and skills, etc.

² See "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds" (64 FR 28689, effective May 21, 1999) available at <https://www.govinfo.gov/content/pkg/FR-1999-05-26/pdf/99-13202.pdf>. "Costs for imprisonments for conviction of a crime are not a basis for a public charge determination." *Id.*

³ 8 C.F.R. § 212.22(d).

⁴ The rule narrowly defines it as "Medicaid under 42 U.S.C. 1396 *et seq.*" 8 C.F.R. 212.20(b)(5). See also [8 USCIS-PM G.10](#) (including a detailed description of the several Medicaid/Medi-Cal exclusions).

⁵ 8 C.F.R. § 212.20(b)(5)(i). The rule specifically incorporates the broad definition of emergency medical services in 42 U.S.C. § 1396b(v) and 42 C.F.R. § 440.255 ("Emergency services required after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in...[p]lacing the patient's health in serious jeopardy; [s]erious impairment to bodily functions; or [s]erious dysfunction of any bodily organ or part."). See also *Welf. & Inst. Code* § 14007.5(d); *Crespin v. Kizer*, 226 Cal. App. 3d 498 (1990). This also includes "[s]ervices for pregnant women which are included in the approved State plan. These services include routine prenatal care, labor and delivery, and routine post-partum care. States, at their option, may provide additional plan services for the treatment of conditions which may complicate the pregnancy or delivery." *Id.* [According to DHCS](#), state-funded restricted-scope coverage for long-term care may be designated with aid code 53.

⁶ 8 C.F.R. § 212.20(b)(5)(iv).

⁷ *Id.*

⁸ Pregnancy-related aid codes include 1U, 5J, 5R, 55, C1, C2, D2, D3, D5, D8, D9, F4, G4, and J6. See https://www.dhcs.ca.gov/services/MH/Documents/Final_Aid_Code_Master_Chart_5-1-19.pdf. [MCAP is funded by the State Children's Health Insurance Program \(CHIP\) under 42 U.S.C. § 1397aa et seq.](#) See <https://www.dhcs.ca.gov/formsandpubs/laws/Documents/18-0028package.pdf>. [The new public charge rule expressly excludes CHIP.](#) See 84 F.R. 41380, 41383, 41392.

⁹ 8 C.F.R. §§ 212.20(b)(5)(ii), (iii) (referencing services under the Individuals with Disabilities Education (IDEA) Act, 20 U.S.C. § 1400 *et seq.*). In California, Medi-Cal provides these services under the [Local Educational Agency \(LEA\) Medi-Cal Billing Option](#).

¹⁰ [8 USCIS-PM G.10\(A\)\(1\)](#) ("If Medi-Cal is provided to the alien under a state-only authority at no expense to the federal government, it is not considered in the public charge inadmissibility determination.")

¹¹ See *Welf. & Inst. Code* § 14007.8(d)(2) (funded entirely by state appropriation since federal law (42 U.S.C. § 1396b(v)) does not fund full-scope coverage for undocumented children). Children with full-scope and state-funded Medi-Cal under SB 75 may have any of several aid codes shared with lawfully-present immigrants, so you cannot identify them by their aid codes alone. See [DHCS Aid Code Master Chart \(May 1, 2019\) at page 85](#).

¹² See *Welf. & Inst. Code* § 14007.8(b) (funded entirely by state appropriation like for SB 75).

¹³ *Welf. & Inst. Code* § 14010(a) (authorizing no federal funding when services are inconsistent with federal law). DHCS confirms that minor consent Medi-Cal (aid codes 7M, 7N, 7P and 7R) receives no federal funding. See [DHCS Aid Code Master Chart \(May 1, 2019\) at page 75](#).

¹⁴ Aid code R1. See [DHCS Aid Code Master Chart \(May 1, 2019\) at page 76](#).

¹⁵ See 42 C.F.R. § 435.1110. For other groups, you will want to see if the HPE beneficiary fits into any of the Medi-Cal exclusion groups most likely to apply to HPE: under age 21, pregnant or postpartum, and emergency medical condition. Remember that under the rule's 12/36 measure for the heavily-weighted negative factor, short-term receipt of federally-funded HPE may not amount to 12 months of benefits receipt.

¹⁶ Aid code 77. See [ACWDL 11-02](#) (February 1, 2011); [DHCS Aid Code Chart \(PDF\)](#).

¹⁷ These beneficiaries are normally over Medi-Cal's asset limits. See *Welf. & Inst. Code* § 14140 *et seq.*; 22 CCR § 50264(a)(1); see also [MEPM Article 17](#); [DHCS Aid Code Chart \(PDF\)](#) (aid codes 71 and 73).

¹⁸ See *Welf. & Inst. Code* § 15800 *et seq.* MCAP is funded through a mix of state and federal funding, but fortunately the federal funding is through CHIP (42 U.S.C. § 1397aa-1397mm), which the new public charge rule excludes. See [8 USCIS-PM G.10\(B\)\(1\)](#).

¹⁹ CHDP is CHIP-funded, so it does not fall under 42 U.S.C. § 1396. See https://www.dhcs.ca.gov/formsandpubs/laws/Documents/CA%20State%20Plan.complete%20w%2014-0004_DH.pdf.

²⁰ EWC is funded by the “Breast Cancer Control Account” with revenue from California state cigarette taxes. See Rev. & Tax Code §§ 30461.6(a), (b)(2), (c).

²¹ See Health & Safety Code § 123905; see also https://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/part2/calchild_m00i00o03o04o07o09o11a02a04a05a06a07a08p00v00.doc at page 2.

²² See [ACWDL 17-11](#) (April 12, 2017) (including aid codes 0T, 0R, and 0U – which include some federally-funded BCCTP beneficiaries, so state-funded BCCTP beneficiaries cannot always be identified by their aid codes).

²³ Refugee aid codes include 0A, 01, 02, and 08. See [DHCS Aid Code Master Chart \(May 1, 2019\) at page 4](#). While administered by Medi-Cal, the program is not funded through Medicaid, but the federal Office of Refugee Resettlement.

²⁴ See [8 USCIS-PM G.10\(B\)\(1\)](#). Instead, the rule counts Medicare as a heavily-weighted positive factor. [8 USCIS-PM G.9\(A\)\(4\)](#). But Medicare Savings Programs (QMB, SLMB, etc.) are authorized under 42 U.S.C. § 1396a(a)(10)(E) and may be countable under the new public charge rule. See [84 Fed. Reg. 41297, 41386](#) (“[A]ny receive [sic] of Medicaid as a subsidy for Medicare would be considered receipt of a public benefit in the public charge inadmissibility determination.”) Because of strict Medicare eligibility rules, very few immigrants would qualify for MSPs and be subject to the new public charge rule. For more information, see [Justice in Aging’s Issue Brief: Older Immigrants and Medicare \(April 2019\)](#).

²⁵ See Welf. & Inst. Code § 17000.

²⁶ See [8 USCIS-PM G.10\(B\)\(1\)](#).

²⁷ *Id.*

²⁸ Authorized under the Public Health Service Act (42 U.S.C. § 201 *et seq.*). See [Public Law 111–87](#) (111th Congress).

²⁹ *Id.*

³⁰ Instead, the public charge rule counts Covered California as at least a positive factor. See [8 USCIS-PM G.9\(A\)\(4\)](#).

³¹ Only qualified immigrants not subject to the five-year bar would receive federally-funded Medi-Cal. For more information, see NILC’s fantastic chart on [Major Benefit Programs Available to Immigrants in California](#). See also pages 16-17 of Western Center’s [Getting and Keeping Health Coverage for Low-Income Californians](#) as well as the note on the five-year bar on page 18.

³² For a complete list of exempt immigrants, see ILRC’s excellent resource on [Public Charge Exemptions and Considerations](#).

³³ 8 C.F.R. § 212.20(b)(7).

³⁴ 8 C.F.R. § 212.20(b)(9). See also [8 USCIS-PM G.10\(B\)\(3\)](#).

³⁵ 84 Fed. Reg. 41297, 41298; see also 8 C.F.R. § 212.20; [8 USCIS-PM G.3](#).

³⁶ See 8 C.F.R. § 212.20(b). See also [8 USCIS-PM G.9\(A\)\(4\)](#).

³⁷ [8 USCIS-PM G.9\(A\)\(4\)](#).

³⁸ See 8 C.F.R. § 212.22(c)(2)(iii). See also [8 USCIS-PM G.9\(A\)\(4\)](#) (footnote 30).

³⁹ *Id.*

⁴⁰ [8 USCIS-PM G.9\(A\)\(4\)](#). Immigration attorneys have found several inconsistencies in USCIS materials regarding the plain positive and heavily-weighted positive factors. We expect USCIS to issue revisions and clarifications in the future, and will update this Practice Tip if any changes impact this guidance.

⁴¹ *Id.*

⁴² [Instructions for Form I-944 at page 8](#).

⁴³ [Form I-944 at page 8](#).

⁴⁴ [8 USCIS-PM G.10\(A\)\(1\)](#).

⁴⁵ *Id.*