News



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Some immigrants will face a choice between letting their children go without needed benefits and jeopardizing their chances of staying in the country, if drafted guidelines from the Department of Homeland Security go into effect.

"We really could see families forgo that needed healthcare or go hungry in order to keep a family together and that's not, I think, a goal that enforces the common good," said Ashley Feasley, policy director for the U.S. bishops' Migration and Refugee Services.

The possible new rule, a Feb. 6 draft of which was leaked, would change the guidelines for determining that an immigrant applying for an extended stay or lawful permanent residence from inside the U.S. is unlikely to become a "public charge," a requirement certain categories of migrants, include those filing family-based petitions, must meet.

Current U.S. Citizenship and Immigration Services guidelines define a "public charge" as "an individual who is likely to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at

government expense."

The current guidelines specifically exclude non-cash benefits and special-purpose cash benefits from consideration because they are "generally supplemental in nature." Benefits received by one member of a family are also not attributed to the others unless they are the family's sole support.

But the new guidelines would change this, making non-cash assistance received by immigrants or their dependents — even if those dependents are U.S. citizens — for more than six months in the past two years a "heavily weighted" negative factor.

Non-cash benefits that would no longer be excluded from consideration include the Children's Health Insurance Program (or CHIP); The Supplemental Nutrition Assistance Program (or SNAP, formerly called food stamps); the Special Supplemental Nutrition Program for Women, Infants and Children (also known as WIC); the Head Start program; housing benefits and energy assistance.

"We're concerned because those programs and the social safety nets are there to ensure the health, well-being and education of those individuals," said Feasley.

"We know that immigrant families already worry about using government programs, that it'll harm their immigration status or their future opportunities," she added. "This is really problematic when we think about some of the larger needs as it relates to hunger, health care, child poverty, homelessness."

"As Christians, it is very clear that we have a calling to both protect and love those in marginal communities," said Laura Peralta-Schulte, senior government relations advocate for Catholic social justice lobby Network, and that "we also have a charge to protect children. Again, this particularly impacts children. … It's certainly not in keeping with our faith calling."

Only a few benefits, such as emergency and disaster relief, public schooling, free and reduced price school lunches and assistance for immunizations would not count against immigrants under the drafted guidelines. Those who are already exempt from the "public charge" test, such as refugees and asylum seekers, would be unaffected, as would permanent residents seeking to become citizens.

DHS would also consider accepting a $10,000 bond, forfeit if the immigrant uses any public benefits, as assurance they will not become a public charge, and will look

favorably on immigrants who are employed at at least 250 percent of the federal poverty level.

Charles Wheeler, director of the training and legal services department for the Catholic Legal Immigration Network Inc. (known as CLINIC), said the Trump administration seems to be trying to fulfill its promise to "get tough on immigrants who come to the U.S. and subsequently draw some sort of government benefits."

"There's no evidence, in fact, that this is happening," said Wheeler, pointing out that welfare and immigration reform in 1996 barred new lawful permanent residents from accessing most government benefits for five years, and made it difficult for them to meet eligibility requirements afterward.

Immigrants who are not yet permanent residents are also ineligible for many government benefits, but can receive some assistance, like support for pregnant women and young children through WIC, that could soon be counted against them. U.S.-citizen children may access public benefits regardless of their parents' status.

Considering immigrant families' use of non-cash benefits is a sharp departure from recent policy, said Wheeler, who explained that the main factor considered for family-based immigrants since 1999 was the mandatory affidavit of support that a sponsor files demonstrating he or she can support the immigrant at 125% of the poverty level.

However, the draft also did not come as a surprise. Feasley said advocates have been tracking the issue since a draft of an executive order was leaked in early 2017.

"We are part of a large group of faith and secular groups that have been ready and are willing to do everything we can to push against this," said Peralta-Schulte. "What surprised me is that it took them a year plus to finally … get close to unveiling it."

"From our perspective, it's just another arrow in what they see as a battle to limit immigration into this country or to punish people who are here, even those who have been here for many, many years," she added. "To me it's not shocking that they're going after benefits, trying to shame the immigrant community for accessing benefits."

The State Department, which handles visa applications for immigrants applying from outside the country, has already broadened its considerations to include factors such

as age, health, employment history and prospects, insurance and family responsibilities.

"It's going to slow down the process and make more people gather a lot of documentation and we're concerned that a lot of people won't be able to make it through that hurdle," said Wheeler, adding that the proposed requirements from DHS are even more concerning.

According to Wheeler, immigrants were fearful about using public benefits for their children until the administration clarified the situation by publishing the current guidelines in 1999.

"In this case the fear may actually be very justified," Wheeler said. "We're back now to the days that there's a lot of fear out there as to what benefits their children should get. And it reverses a lot of education, what we've been trying to tell people for the past 20 years."

While the policy is still in draft form, Wheeler said he expected it to be published in March with very few changes. Whether it subsequently becomes policy or not "really depends on whether they take seriously any of the public comments, or concern, or in some cases even outrage that they would be including certain benefit programs," he said.

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If there is a formal comment period, groups like the U.S. bishops' conference, Catholic Charities USA or CLINIC would certainly express concern, said Feasley.

Peralta-Schulte suggested that the policy might not stand legal scrutiny and also described plans to encourage members of Congress to pressure the executive branch to reverse the decision if the policy is finalized.

Faith groups would also make clear they oppose the measure, she said. "They're really changing what has been a long-standing policy on public charge, and really broadening it to such an extreme that we really have to make a moral argument, as well as do all we can through other means to stop this."

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