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***CMCS Informational Bulletin***

**DATE:** July 22, 2021

**FROM:** Daniel Tsai, Deputy Administrator and Director  
Center for Medicaid and CHIP Services (CMCS)

**SUBJECT: Public Charge and Safeguarding Beneficiary Information**

The purpose of this CMCS Informational Bulletin is to inform states of a change regarding the U.S. Department of Homeland Security (DHS) regulation, “Inadmissibility on Public Charge Grounds Final Rule” (the “2019 Public Charge Final Rule”),<sup>1</sup> issued on August 14, 2019, and implemented on February 24, 2020, and to remind states about the requirement to safeguard applicant and beneficiary information.

The 2019 Public Charge Final Rule has been vacated and is no longer in effect. Effective March 9, 2021, the U.S. Court of Appeals for the Seventh Circuit lifted its stay of the vacatur of the DHS 2019 Public Charge Final Rule, and the U.S. District Court for the Northern District of Illinois’ order vacating the Public Charge Final Rule went into effect. When the vacatur went into effect, DHS immediately stopped applying the 2019 Public Charge Final Rule. Instead, DHS is applying the public charge inadmissibility statute, in accordance with the [1999 Interim Field Guidance on Deportability and Inadmissibility on Public Charge Grounds](#)<sup>2</sup> (the “1999 Interim Field Guidance”) when making public charge determinations. This is the policy that was in place before the 2019 Public Charge Final Rule went into effect. Under the 1999 Interim Field Guidance, DHS is not considering an individual’s receipt of Medicaid benefits as part of the public charge determination, with one exception for individuals who are institutionalized for long-term care (such as nursing facility residents or residents of mental health institutions) and are receiving Medicaid coverage for their institutional services. Institutionalization for short periods of rehabilitation is not considered in a public charge determination. Children’s Health Insurance Program (CHIP) benefits are not considered in a public charge determination in any circumstance.

On March 15, 2021, DHS published the “Inadmissibility on Public Charge Grounds; Implementation of Vacatur”<sup>3</sup> rule in the *Federal Register*. The rule removed the regulations resulting from the 2019 Public Charge Final Rule from the *Code of Federal Regulations*, and restored the regulatory text to appear as it did prior to the issuance of the 2019 Public Charge Final Rule. For additional information about DHS’s public charge policy and the 1999 Interim

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<sup>1</sup> <https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds>.

<sup>2</sup> <https://www.federalregister.gov/documents/1999/05/26/99-13202/field-guidance-on-deportability-and-inadmissibility-on-public-charge-grounds>.

<sup>3</sup> <https://www.govinfo.gov/content/pkg/FR-2021-03-15/pdf/2021-05357.pdf>.

Field Guidance, please refer to CMS’s State Health Official Letter (issued May 26, 1999)<sup>4</sup> and the U.S. Citizenship and Immigration Services (USCIS) website at <https://www.uscis.gov/greencard/public-charge>.

CMS reminds states of their responsibility to safeguard applicant and beneficiary information. States may only share information about an applicant or beneficiary when sharing that information is directly related to administration of the Medicaid state plan in accordance with section 1902(a)(7)(A) of the Social Security Act, implemented at 42 CFR part 431, subpart F. Under section 2101(a) of the Act and 42 C.F.R. § 457.1110, state agencies administering a separate CHIP are also required to comply with provisions at 42 CFR part 431, subpart F. Under longstanding policy, sharing information with DHS about an applicant’s or beneficiary’s Medicaid or CHIP coverage for purposes of a public charge determination is generally not directly related to the administration of the state plan. This policy is described in State Medicaid Director Letter (issued on December 17, 1997)<sup>5</sup> and State Health Official letter (issued May 26, 1999).<sup>6</sup> States ordinarily may not provide DHS with information about the medical assistance they have furnished to institutionalized beneficiaries even though DHS may consider such assistance in a public charge determination in the instance of long-term institutionalized care described above.

More information on what it means to be a public charge and the current public charge policy guidance, is available at the <https://www.uscis.gov/greencard/public-charge>.

Questions regarding Medicaid may be directed to Sarah Lichtman Spector, Director, Division of Medicaid Eligibility Policy, at (410) 786-3031 or [Sarah.Spector@cms.hhs.gov](mailto:Sarah.Spector@cms.hhs.gov). Questions regarding CHIP may be directed to Meg Barry, Director, Division of State Coverage Programs at (410) 786-1536 or [Meg.Barry@cms.hhs.gov](mailto:Meg.Barry@cms.hhs.gov).

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<sup>4</sup> <https://www.medicaid.gov/federal-policy-guidance/downloads/sho052699.pdf>. See also, “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,” 64 FR 28689 (issued March 26, 1999) available at <https://www.govinfo.gov/content/pkg/FR-1999-05-26/pdf/99-13202.pdf>.

<sup>5</sup> <https://www.medicaid.gov/federal-policy-guidance/downloads/smd121797.pdf>.

<sup>6</sup> See Footnote 4.