

ISSUE BRIEF: How the Public Charge Rule Affects Immigrants Receiving Benefits

By Amy Rosenberg, JD, Lecturer on Law & Senior Clinical Instructor, Center for Health Law & Policy Innovation of Harvard Law School



Department of Homeland Security's Proposed "Public Charge" Rule

On October 10, 2018, the Department of Homeland Security (DHS) published a draft rule that would significantly change immigration policy around "public charge." The proposed rule would make it harder for many immigrants to come to the U.S. or get green cards if the government finds that they are likely to use public benefits like Medicaid, Section 8 housing subsidies, and SNAP (food stamps).

What is "public charge"? Public charge is a long-standing concept in U.S. immigration law that allows consideration of whether a person is likely to be primarily dependent on government-provided benefits in making an immigration status decision.

How does public charge work now? Current policy can find certain immigrants to be a public charge if they have or are likely "to become primarily dependent on the government for subsistence." Currently, the *only* benefits that count toward determining public charge are 1) *cash assistance* (including Supplemental Security Income (SSI), Temporary Assistance to Needy Families (TANF), and state/local general assistance), or 2) *government-funded long-term institutional care* (like nursing homes or mental health facilities). When considering whether someone is likely to become a public charge, the government reviews a range of factors, including age, health, income, family size, education, and skills.

How would the proposed rule change public charge? DHS' proposed rule would change the definition of public charge from someone who relies on the government as the main source of support to someone who uses one or more *specified* public benefit programs. Among other changes, the proposed rule would expand the types of assistance that count in a public charge determination to include non-emergency Medicaid, Supplemental Nutrition Assistance Program (SNAP/food stamps), public housing, Section 8 housing benefits, and Medicare Part D prescription drug subsidies. *The proposed rule does not include Ryan White Program services and benefits, and receipt of these services should not be counted in a public charge assessment.* However, under the proposed rule, a number of factors *would* be weighed negatively in the public charge assessment (e.g., earning less than 125% of the federal poverty level, having limited English ability, or *having a health condition, such as HIV, that needs extensive treatment or affects ability to work*).

Does the proposed rule apply to all immigrants? No. The proposed rule would primarily affect people seeking visas to come to the U.S. or applying for a green card through family-based petitions. It would *not* affect: Lawful Permanent Residents (green card holders) applying for citizenship, refugees, asylum seekers, survivors of domestic violence/trafficking/serious crimes, active service members/reservists and their families, and a few additional protected categories.

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Effective Strategies for Talking about the Proposed Public Charge Rule

Service providers who work with immigrant communities report that the proposed public charge rule has already caused widespread fear and confusion. This means that many individuals and families have stopped seeking help with housing, health care, and food, even if the rule would not apply to them, and even if they are using benefits not included in the rule (*like Ryan White Programs or job training services*). The proposed rule could deter as many as 26 million people from participating in programs for which they are eligible, with potentially dire consequences for individual and public health. DHS itself acknowledges that the rule and its chilling impact could lead to worse health outcomes, increased disease, more poverty and housing instability, and negative community economic effects.¹

Providers working with people living with HIV who are immigrants should ensure that their clients understand some key information about the proposed public charge rule, including:

- The proposed rule is *only a proposal* at this point—it is not the law. The proposed rule may change before becoming final, and if it is finalized, it will not take effect for at least 60 days.
- Using Medicaid, Section 8, or SNAP *now* will not count against someone—it counts only if the specified benefits are used *after* the rule becomes *final*. So someone could enroll in benefits now, disenroll before the final rule's effective date, and not have the benefits count.
- Only the *specific benefits* listed in the proposed rule would count toward public charge—many other benefits would *not* count (e.g., Ryan White Program services, HIV/HCV/STI testing and treatment, vocational services, emergency Medicaid, Affordable Care Act Premium Tax Credits).
- The public charge test looks at many factors (e.g. income, age, health, education,) in deciding whether someone is a public charge, so no one factor is determinative.
- Only benefits used by the individual immigrant would be considered—*not* benefits used by family members. For example, if an immigrant mother used Medicaid for her U.S. citizen child, that would not count against the mother.
- Changes would not apply to certain groups of immigrants (e.g., refugees, asylum seekers, domestic violence survivors). Green card holders have no public charge test when renewing or applying for citizenship, but if they travel outside the U.S. for more than six months, may face public charge assessment upon return.
- Federal and state laws protect the privacy of people applying for/using government programs—the proposed rule does not change that. *Information held by schools, health centers, and hospitals is protected from Immigration and Customs Enforcement (ICE).*

Additional Resources

This brief provides only a general overview of a complex proposed rule—it does not cover all details of the proposed rule and does not provide legal advice. For more information, see the following links:

- Protecting Immigrant Families: <https://protectingimmigrantfamilies.org/>
- Kaiser Family Foundation brief: <https://www.kff.org/report-section/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaide-key-findings/>

¹ (83 Fed. Reg. 51114-51296 (October 10, 2018) available at <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>).