



Proposed New Rules on Public Charge

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Introduction: Why are we here?

Proposed rule changes – not yet effective . . .

Immigration Law Rules;
No changes in eligibility rules for government benefits and services

Misinformation already out there

Sources: inaccurate news reports, uninformed immigration lawyers, other uninformed trusted sources

All of us can play a role in getting correct information to consumers

What's at stake?

Choices about meeting basic health and nutrition needs and maintaining housing & pursuing immigration options

Orientation: Goals of this Training

We want you to learn:

- 1) **How to understand the rule changes and basic vocabulary** – Goal is not to memorize the changes, but to be comfortable enough to answer basic consumer questions.
- 2) **To recognize when a consumer presents a public charge issue** – both consumers who need counseling to mitigate chilling effect and consumers who are currently or will in the near future be subject to public charge.
- 3) **Where to refer consumers who present with public charge issues** – consumers should not discontinue benefits or make decisions about their immigration status without consulting with an immigration and/or benefits attorney. Your job is NOT to provide immigration advice or advise consumers about whether to discontinue benefits.

Part I

Proposed Rule Changes

What is Public Charge?

- Not a new concept in immigration law.
- One of many grounds of inadmissibility
- INA 212(a)(4)(A) provides: “Any alien, who . . . at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.”
- INA 212(a)(4)(B) specifies the factors to be taken into account in determining if a non-citizen should be denied admission or adjustment:
 - Age
 - Health
 - Family status
 - Assets, resources, and financial status
 - Education and skills
- In limited circumstances, being a public charge can also be asserted as a ground for removal or deportation.

Current Public Charge Rule

- Refers to a person who is likely to become primarily dependent on the government for subsistence as demonstrated by:
 - Receipt of cash assistance for income maintenance, OR
 - Institutionalization for long-term care at government expense.
- In-kind benefits like health care, SNAP, do not count.
- An affidavit of support from a sponsor is also considered.

Who is Subject to Public Charge

- As a ground of inadmissibility it comes into play:
 - When a person applies for admission to the United States, e.g. as a tourist, a student or with an immigrant visa.
 - When a person applies for Lawful Permanent Resident (LPR), i.e. green card status, for the first time.
- Certain Lawful Permanent Residents (Green Card Holders) in the limited circumstances under which they are treated as seeking admission, including:
 - returning to the U.S. after spending more than six months abroad,
 - being otherwise found to have given up their LPR status, or
 - having departed the U.S. after committing certain crimes.
- As a ground of deportability, it applies to:
 - Immigrants who acquired LPR status via a family-based petition and who are still required to have a financial sponsor. (Note: Based on the current law, removal on public charge grounds is exceedingly rare.)

Obtaining LPR Status Through a Family Member

- Step 1: Petitioner establishes qualifying relationship by filing Form I-130 Petition for Alien Relative
- Step 2: Beneficiary submits application to adjust status by filing Form I-485
 - Form I-485 is not used exclusively by family-based adjusters; but only a family-based adjuster will have an affidavit of support completed by a financial sponsor.
 - Needs to demonstrate that she is not “inadmissible.”
 - **This is where public charge most commonly arises, if not exempt.**

Who is NOT Subject to Public Charge

- Applying for or granted status as a battered immigrant under VAWA
- T Visa holders
- U Visa applicants or holders
- Asylees
- Refugees
- Noncitizens who have continuously lived in the US since before 01/01/1972 and are eligible to apply for permanent residence
- Special Immigrant Visa Holder (Afghan or Iraqi nationals who have helped the US)
- Persons granted Special Immigrant Juvenile Status
- Persons eligible to adjust under the:
 - Cuban Adjustment Act
 - Nicaraguan Adjustment & Central American Relief Act
 - Haitian Refugee Immigration Fairness Act
- LPRs for more than 5 years (other than those seeking admission)
- LPRs less than 5 years (except in very limited circumstances)
- Naturalized U.S. citizen
- Persons who have 10 years of work for which they paid taxes or have a spouse or parent with whose work history they can be credited

Timeline

- 09-22-2018: New draft regulation posted on DHS website
- 10-10-2018: Final proposed rule published in Federal Register
- 12-10-2018: 60-day comment period ends
- [TBD] **Review period for comments**
- [TBD] Final rule published in Federal Register
- [TBD] Rule effective 60 days after final rule published

NOTE: Current rules remain in effect until the proposed rules become final

Current Law vs. Proposed Changes

- **Categories of non-citizens to whom it applies:** non-citizens seeking admission or adjustment who are not otherwise statutorily exempt from public charge and who have a sponsor.
- **Statutory exemption:** many categories; in addition, undocumented and persons seeking naturalization are also not subject to public charge.



Categories of non-citizens to whom it applies: same as current + holders of non-immigrant visas seeking renewal or extension.



Statutory exemption: This does not change.

Current Law

vs. Proposed Changes

- **Only benefits that count:** Cash Assistance, SSI and long-term institutional care.
- **Degree of benefits reliance considered:** must be “primarily dependent”; looks at totality of circumstances, including age, health, family status, assets, resources and financial status, education and skills and whether person has an affidavit of support.



Benefits that count: **Extreme change.**

- Medicaid, Medicare Part D low-income subsidy, SNAP, Federal Housing Assistance, added to Cash Assistance, SSI and long-term institutional care.

Degree of benefits reliance

considered: **Extreme change.**

- Meeting low, minimum threshold keyed to federal poverty level would trigger public charge.
- Changes way in which totality of circumstances measured. Affidavit of Support weighed less heavily.¹²

Which Public Benefits Count Under Proposed Rule?

Two Primary Categories of public benefits that count:

(1) “Monetizable” benefits –

- federal, state, or local or tribal cash assistance for income maintenance, including SSI, TANF (in New York “FA”), general assistance (in New York “SNA”)
- non cash monetizable benefits – SNAP, Section 8

(2) “Non-monetizable” benefits

- Federally funded Medicaid (except emergency MA, Medicaid funded services under IDEA and several other exceptions)
- Any benefit for institutionalization for long-term care at government expense
- Low income subsidy (Extra Help) for Medicare Part D
- NYCHA/public housing

NOTE: Any benefit not listed in the final rule will not be considered.

Totality of Circumstances Test

- The factors to be taken into account in determining if a non-citizen is subject to public charge remain the same:
 - Age
 - Health
 - Family status
 - Assets, resources, and financial status
 - Education and skills
- However they are weighed in a dramatically different way that puts many more low-income people at risk of public charge.
- Different formulas used to weigh monetizable and non-monetizable benefits, but minimal use of countable benefits (and even an eligibility determination) counts as a negative factor.

How Will Medicaid and Medicare Part D Low Income Subsidy be used in a Public Charge Determination?

- **Non-monetizable benefit:** Considered a negative factor if received for more than 12 months in the aggregate within a 36 month period (each benefit counts for a whole month, so receipt of two benefits in one month counts as two months)
- **In combination with a monetizable benefit:** receipt is a negative factor if received for 9 months.

Is the Proposed Rule Prospective or Retrospective?

- Public charge remains a forward looking test
- Benefits that have not been previously considered as part of the public charge test, like Medicaid and other forms of health care, will not count unless used after the final rule is effective.
 - 60 days after the final rule is published
- Clients will therefore have 60 days within which to decide to continue using the benefits

Part I: Q&A

Part II

Identifying public charge issues

What does a public charge issue look like?

“I’m afraid of being a public charge.”

Consumer might say this, but more likely you will hear:

- I want to stop receiving benefits
- I don’t want to apply for benefits because of immigration
- I need help because I can’t take benefits anymore

Two Main Types of Public Charge Concerns

Government Benefits:

Concerns about receiving or applying for government benefits and services.

Benefits considered in current rules:
welfare, SNA, FA, Cash Assistance, TANF, SSI

Benefits not considered in current rules:

- SSD, Unemployment
- **Health Care**: Medicaid, Essential Plan, CHIP, federal tax credits and cost sharing reductions for Qualified Health Plans, Medicare, long-term institutional care
- **Nutritional assistance**: SNAP/Food Stamps, Food Pantries, Soup Kitchens
- **Housing help**: Shelter, Section 8, Public Housing, "One-Shot Deal"/Rent-Arrears grant
- **Other**: WIC, Child Care, EITC, school lunches

Immigration:

Concerns about immigration options/choices:

Immigration options/choices relevant to current rules: applying for LPR status through a family member

Immigration options/choices not relevant to current rules:

- Applying for naturalization/to be a citizen
- Continuing to be an LPR/green card holders
- Applying for an exempt status – asylee, U or T visa, VAWA, SIJ
- Being undocumented (other risks, but not public charge)

Two Categories of Consumers Impacted by Public Charge

Category 1:

Consumers who are not subject to public charge but experiencing chilling effect:

- Consumers who are ***already an LPR and/or are in the process of naturalizing***, becoming a U.S. citizen.
- Consumers who are ***statutorily exempt*** from public charge.
- ***Note: Consumers who are more likely to be eligible for benefits that trigger public charge (especially Section 8, SNAP and SSI) are in most cases exempt from public charge.***

Category 2:

Consumers who are subject or possibly subject to public charge in the future:

- Consumers ***in the process of adjusting through a family member*** (or family-owned business) and who are required to have a financial sponsor.
- Consumers who may ***not be subject to public charge now***, but who would need to adjust through a family-member sponsor if they want to become an LPR, and thereby ***become subject to public charge in the future***.
- ***Note: Of the consumers subject to public charge, very few are actually eligible for the benefits that would trigger public charge. (Explained in the next few slides.)***

Review of Non-Citizen Eligibility for Benefits

Non-citizens' eligibility for benefits is limited:

- For federal benefits (SNAP, federal MA, SSI, TANF; federal housing subsidies):
 - a person has to be considered a “qualified alien,” (QA) and many QAs have to wait five years in status (known as “the five year bar”) before they are eligible for federal benefits; OR
 - They have to have or be able to borrow 40 Qualifying Quarters; OR
 - They were present in the U.S. prior to 8/22/96 (when the rules changed)
- For State-funded benefits (cash assistance, state funded Medicaid):
 - a person generally has to be considered Permanently Residing Under Color of Law (PRCUOL) by the State agency administering the benefit (for cash, OTDA; for state-funded Medicaid, DOH)
- Essential Plan enrollees are not impacted

Eligibility for benefits that trigger public charge is even more limited:

- With the exception of State-funded welfare (Safety Net Assistance/SNA), all the benefits that trigger public charge under the proposed new rules are limited to Qualified Aliens, and many of those Qualified Aliens are subject to the five year bar (e.g., they are only eligible for the triggering benefits after 5 years in QA status)
- State-funded welfare is only available to a short list of people who are considered PRUCOL.

Category 1 Examples— Profiles of Consumers Experiencing Chilling Effect

- Example 1 –
Consumer who was granted asylum is in the process of applying to adjust and has a pending I-485. Consumer is concerned about continuing to receive Essential Plan benefits.
- Example 2 –
Consumer who adjusted through a family member 8 years ago wants to naturalize but she's worried about the fact that she and her family have received cash assistance and Medicaid during periods when she was unemployed.

Category 2 – Consumers subject to public charge under proposed regulation or who could possibly be subject to public charge in the future

- **Example 3 -**

Consumer is pregnant and was granted a stay of removal and an Order of Supervision, making her eligible for federally-funded Medicaid. She wants to know if she should close her case because of the proposed rule change.

- **Example 4 -**

Consumer has been granted TPS. She knows her TPS will expire in 1 year, and wants to adjust through her daughter who will be 21 and eligible to petition for her mom in another 9 months. Mom is eligible for Cash Assistance and is worried about receiving these benefits now, because she plans to adjust through a family member in the future.

Quick Summary

Health programs and the proposed rule

- Health programs **not included** in the proposed rule:
 - Premium tax credits and cost sharing reductions for Qualified Health Plans
 - Essential Plan
 - Child Health Plus (the proposed rule seeks comment on whether to include in final rule)
 - State funded Medicaid (Medicaid for many immigrants)
 - Medicare (other than Low income subsidy for Part D)
 - TRICARE and VA benefits
- Health programs **included** in the proposed rule:
 - Federally funded Medicaid
 - Institutional long term care paid for by any level of government
 - Low income subsidy (Extra Help) for Medicare Part D

Timing of any changes

- We are currently in the 60 day comment period for the proposed rule
 - The last day to comment is December 10, 2018
 - Comments may be submitted by clicking on the comment button found with the proposed rule here: <https://www.regulations.gov/docket?D=USCIS-2010-0012>
 - You can also access easy to use template comments through ouramericanstory.us
 - Nothing changes until a final rule is published.
- Once the comments are reviewed, a final rule will be published. Any changes made in the final rule will go into effect 60 days from the date published.
 - During this 60 day period, immigrants who think they may be impacted should speak with an immigration expert to see if they need to make any changes in their benefits.

Consumers with specific immigration questions

- Although nothing has changed, many immigrants may be worried that the proposed rule will impact them when it is finalized.
- Consumers with specific questions about whether the proposed public charge rule may apply to them should speak with an immigration lawyer or call the Office of New Americans toll-free hotline at 1-800-566-7636 or The Legal Aid Society's immigration hotline at 1-844-955-3425 for assistance.

Questions & Answers