

Inadmissibility on Public Grounds Proposed Rule: Summary Briefing

Overview:

The Department of Homeland Security's U.S. Citizen & Immigration Services (USCIS) has proposed a sweeping expansion of the current regulations that guide immigration decisions. Called the "Inadmissibility on Public Charge Grounds" rule, this complex 183-page regulation would force "lawfully present" immigrants to give up basic assistance (healthcare, food and housing) or risk losing their legal status and path to citizenship. It would penalize the poor, the sick, the young and the elderly. If enacted, the consequences would be detrimental and far-reaching for not only immigrants, but for public health, the healthcare system, the workforce, and our economy.

USCIS is taking public comments through December 10, 2018. Because the ruling is so complex, few people who are not involved in immigration know about or understand "Public Charge." We've created this brief to help explain the proposed rule and its consequences.

What is Public Charge?

The "Public Charge Test" is a long-standing federal law that says that the government can deny admission to the U.S. or refuse an application for lawful permanent residency (green card) if it determines the applicant is likely to become a "public charge" in the future — in other words, to become dependent upon the government. The law does not define precisely what "public charge" means, so it is left up to government agencies to define it through policies or "rules."

What is the current rule?

For nearly 20 years, the government has defined a public charge as someone who is likely to become "*primarily dependent on the government for subsistence.*" They can be disqualified if they receive cash-based assistance amounting to more than 50% of a person's income, specifically:

- *Welfare*
- *Assistance for long-term institutional care*
- *Supplementary Security Income (SSI) for the disabled.*

Use of non-cash benefits such as food stamps, health care and public housing were excluded from consideration – use of them did not make one a public charge.

Who is affected by public charge rules?

Lawful immigrants. Historically, public charge determination has applied to individuals who are

- Seeking to legally enter the U.S.
- Legally in the U.S. and applying to become a Lawful Permanent Resident (i.e. obtain a green card), the first step to citizenship

The new rule includes those, but proposes to broaden the categories of individuals who are subject to Public Charge to also include people who seek:

- an extension of stay (*e.g., to extend their visa*)
- to change their visa type (*e.g., from a student to employment visa*)

These are NOT illegal aliens! They are people who have come here legally, followed the rules, and paid taxes. Nor are they newcomers. Legal immigrants are subject to a 5-year waiting period after receiving “qualified” immigration status before they can even qualify for benefits such as food stamps and Medicaid. Inadmissibility on Public Charge Grounds Proposed Rule Summary Briefing There are some categories of immigrants that, by law, are not subject to public charge determination, including refugees and asylees. However, many of these are also likely to be affected because of fear and confusion about the new rule.

How does the proposed rule change Public Charge determinations?

DHS/USCIS proposes to redefine “public benefit” and to start denying green cards and temporary visas to anyone who they deem likely to use any benefits “at any time in the future.” They have dramatically broadened the list of what is considered a benefit, to include vital assistance programs that were previously excluded:

- Supplemental Nutrition Assistance Program (SNAP or food stamps)
- Temporary Assistance for Needy Families (TANF)
- Non-emergency Medicaid & Medicare Part D (prescription drug subsidies)
- Section 8 Housing and Rental Assistance Programs
- Subsidized public housing

DHS is also considering including the Children’s Health Insurance Program (CHIP).

To determine future use, DHS would look at whether an applicant had previously used, or even applied for, any of these benefits. Starting 60 days after the final rule is effective, use of these newly defined benefits within the past 36 months would be counted as a “heavily weighted negative factor” for admissibility. Use of these benefits prior to 60 days after the effective date would be excluded from consideration and could not be counted against an applicant.

Even the smallest amount of benefit from these programs could result in a negative determination. According to analysis by the Cato Institute, even immigrants who are 95% self-sufficient could be considered a public charge and denied admissibility.

Use of public benefits is not the only “negative factor” that DHS proposes to consider in evaluating whether someone is “likely to become a public charge”. The new rule spells out 14 other “negative factors” that could weigh against people in public charge determination:

- Being younger than 18
- Being older than 61
- Having any medical condition that could interfere with school or work
- Not having private health insurance or sufficient resources to cover such a medical condition
- Having several children or other dependents
- Having financial liabilities
- Having “bad credit” or a low credit score
- Having poor or no employment history
- Not having a high school diploma or higher education
- Not having “adequate education and skills” to hold a job
- Not speaking English § Receiving an application fee waiver from DHS
- Having a sworn financial sponsor whom DHS feels is “unlikely” to follow through

Of special concern, the proposed rule ***negatively weights low income in consideration of admissibility***, disadvantaging people for simply being poor. Individuals with a household income of less than 125% of the Federal Poverty Level (FPL) are considered heavily negatively weighted – while income above 250% of FPL will be considered as a heavily weighed positive factor. The more money you make, the more likely you are to get to stay.

While DHS says it will look at “the totality of circumstances” to determine whether an applicant is likely to become a public charge, adding so many negative factors gives the agency wide leeway to reject a large percentage of immigrants seeking admission or extension/adjustment of their legal status. And since decisions will be made on a case-by-case basis, there is no predictability.

Would this new rule prohibit legal immigrants from using Medicaid or other benefits?

No. Under federal law, legally present immigrants qualify for low-income programs such as food stamps, Medicaid, and public housing – programs their tax-dollars help support. But the proposed new ruling creates a heart-wrenching Catch-22: if they use those benefits, they risk losing legal residency and being deported. This is further complicated by the high percentage of legal immigrants who would be risking separation from their U.S. citizen children.

What is likely to happen if the rule is enacted?

Huge numbers of immigrants who desperately need and are legally qualified to receive these benefits are likely to dis-enroll, along with their U.S. born children – what is called “the chilling effect.”

While DHS estimated 2.5% of the eligible population and family members will dis-enroll from Medicaid, the Kaiser Family Foundation projects that ***disenrollment rates could range from 15% to 35% – between 2.1 and 4.9 million Medicaid/CHIP enrollees nationwide***. Many families will also choose to give up essential food support and housing assistance, with a whole host of negative societal impacts. They may also forgo the Earned Income Tax credit, pushing them further into poverty.

Pregnant women and young children would be particularly hard hit. According to the Center on Budget and Policy Priorities, the result could be ***“higher rates of poor birth outcomes – including higher rates of infant***

and maternal mortality – as well as poorer health, education and financial outcomes for children of all ages.” The majority of the children would be U.S. citizens, who would lose access to Medicaid and food stamps. Research shows that children enrolled in these programs fare better in school, earn more as adults, have fewer ER visits and hospitalizations and a lower rate of heart disease and obesity as adults.

DHS’s own analysis reveals that their policies would likely cause widespread negative consequences. Their precise wording from the proposed rule: *“Disenrollment or foregoing enrollment in public benefits program by aliens otherwise eligible for these programs could lead to:*

- *Worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence*
- *Increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment*
- *Increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated*
- *Increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient*
- *Increased rates of poverty and housing instability*
- *Reduced productivity and educational attainment”*

How many people might be affected?

Tens of millions. Nationwide, more than 10 million legal non-citizens reside in families that receive benefits. Forgoing benefits will impact everyone in an immigrant’s household, including their U.S. born children. The Fiscal Policy Institute estimates that this “chilling effect” would impact **24 million people, including nine million children under the age of 18.**

In Washington State, 240,000 citizen children who are currently enrolled in Medicaid/CHIP coverage live with an immigrant parent.

According to analysis by the Migration Policy Institute, if the rule is enacted as proposed, the number of non-citizens who could face a public charge determination – and deportation – based on benefit use will increase by 15-fold. And analysis by tech startup Boundless, as reported in Forbes, suggests that the new rule could result in more than half of marriage green-card applicants being denied – forcing nearly 200,000 couples to leave the U.S. or live apart indefinitely.

Moreover, because the rules are so complex and there is so much fear and confusion, even immigrants who are not subject to Public Charge may very well be “scared away” from using benefits they are legally qualified to receive.

Which groups of immigrants will be most impacted?

Those who are most vulnerable. Multiple aspects of the policy target **the working poor** – immigrants with incomes under 250% of poverty. According to New American Economy, **more than 91% of non-citizen adults affected by the rule change are employed.** Historically, new immigrants are often at the bottom of the wage ladder and in today’s economy, few have employer paid benefits.

Children of immigrants – nearly 90% of them U.S. citizens – will also be at huge risk, as families decide whether or not to continue receiving benefits. According to the Henry J. Kaiser Family Foundation, in 2016, nearly 20 million children in the U.S. had at least one immigrant parent, and nearly nine in ten of these children are U.S. born citizens.

Non-European immigrants are also likely to be more disadvantaged. According to analysis by the Migration Policy Institute, the brunt of the impact would fall on Hispanic immigrants and Asian American and Pacific Islander immigrants, who represent a large percentage of the populations using benefits.

Other groups likely to be particularly hard hit include the elderly, people with lower levels of education and those with limited English proficiency.

How might this affect the health of our community?

Without support during hard times, poverty will increase and more people in our community will be sick, homeless, and hungry. The impact will be especially hard on children, who may also have to deal with the traumatic stress of worrying about being separated from their parents.

People may avoid getting preventive treatment until it is an emergency. Mortality rates may rise, because people may not be able to afford their medicine or life-saving treatments. Or they may not even seek care when they are ill, for fear of being diagnosed with a medical condition that might exclude them from legal status and citizenship.

Without preventive care, children and adults are less likely to be vaccinated, heightening the risk of infectious disease epidemics.

Health care costs are likely to rise for everyone, because fewer people will have insurance and health systems will be forced to take on more uncompensated care.

How will this affect the health care system?

Safety net providers, including community health centers and hospitals, are likely to feel the greatest impact. Pharmacies, pharmaceutical manufacturers and medical supply companies could also be affected.

There will be more uninsured people and they will be sicker, resulting in lost revenues and driving up the amount of uncompensated care. Emergency department visits and acute care are likely to increase as fewer people receive preventive care.

It could impact the viability of clinics and hospitals, particularly those that already serve the poor and have narrow operating margins, potentially resulting in closures.

In addition, it could further exacerbate current and projected health care workforce shortages. According to the research published by George Mason University, immigrants constitute 22% of nursing, psychiatric and home health aides and 15% of registered nurses.

How might it impact the economy?

The New American Economy reports that the total annual income of workers who would be affected by the proposed public charge rule is more than \$102 billion, with a total cost of \$174 billion should they leave the economy.

DHS estimates that the rule will affect 500,000 temporary visa application each year, with compliance costs that could exceed \$1.3 billion.

Use of non-profit safety-net and local government social services is also likely to increase, potentially impacting taxes or other public services.

Employees on work visas who make less than the arbitrary new threshold – 250% of the poverty line – might not be able to renew their visas and stay in the U.S. Workers who had previously been here legally would be encouraged to go underground, potentially destabilizing industries that depend upon them.

Is the rule final?

No. It must first go through a 60-day comment public comment period which ends on December 10, 2018. DHS must then review and respond to **every unique comment** submitted on the rule. Comments can be submitted online at: <https://www.regulations.gov/comment?D=USCIS-2010-0012-0001>.

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