

The Public Charge Rule: What it Means and What You Can Do to Stop It

The period for public comment on this harmful new proposal ends on December 10, 2018.

On October 10, 2018, the Trump administration published a proposed rule in the Federal Register that would make it much harder for immigrants to obtain visas (including visas to study or work in the U.S.), extend their visas, or adjust their status to become lawful permanent residents.

The proposal would have an especially severe impact on low-wage workers and their families, but it would also harm the health and economic well-being of all of our communities. The public can comment on the proposed rule until December 10, 2018. The administration must then read and develop responses to the comments before finalizing a rule.

What Would This Proposed Rule Do?

In a typical year, slightly more than one million immigrants obtain lawful permanent residency in the U.S., and millions of people seek entry to the U.S. for reasons ranging from work, to study, to joining family.¹ The proposed rule would count participation in any of numerous government services (detailed below) as a basis for denying these applications, forcing these lawful immigrant families to make a choice between meeting basic needs and remaining in this country. Under the proposed rule, many immigrants would be afraid to enroll in Medicaid or, in many cases, Parts B and D of Medicare. Indeed, program enrollments have already been noticeably reduced in anticipation of the rule.²

Under current rules, if someone applies for a visa to come to the United States, or asks to extend their stay in the U.S., or applies for lawful permanent residency (i.e., a green card), the government (specifically, the Department of Homeland Security, or DHS) first determines whether they are likely to become a “public charge”—that is, dependent on the government as their main source of support. If they are found to be so, the applicant may be denied the right to come to the U.S., to stay in the U.S., or to adjust their status.

A number of factors go into the government’s decision about whether someone may become a public charge, but receipt of certain public benefits is one that weighs heavily. Currently, the government only considers receipt of two benefits in public charge determinations: cash benefits for income maintenance, such as TANF benefits (Temporary Assistance to Needy Families), and SSI (Supplemental Security Income)—and of government-funded institutional long term care. It does not consider any other public benefits. Under the proposed rule, the government would

greatly expand the list of benefits that would weigh negatively against a person to also include:

- » Medicaid;
- » Low-income subsidies for Medicare Part D prescription drug coverage (called “extra help with Medicare drug coverage”) and programs that provide support for Medicare premiums and cost-sharing (called “Medicare Savings Programs”) for low-income seniors and people with disabilities;
- » SNAP, the Supplemental Nutrition Assistance Program; and
- » Housing assistance, such as Section 8 vouchers.

This fact sheet explains more about how health and health benefits would be affected.

How Would Medicaid be Considered?

If the immigrant applying for a visa or residency had Medicaid in the past, had Medicaid at the time of the application, or was likely to use Medicaid in the future, that would weigh heavily in the DHS’s decision about whether the person is likely become a “public charge.” If a person received Medicaid for more than 12 months in a three-year (36-month) period, or is expected to receive Medicaid for that amount of time, DHS would consider them likely to become a public charge. If the person received or is expected to receive Medicaid for a shorter period, but also received another public benefit (such as nine months of Medicaid and six months of public housing during

a three-year period), DHS would also consider them likely to become a public charge under the proposal.

In order to enter the country, renew a non-immigrant visa, or become a lawful permanent resident, the person would need to present evidence that they would be able to pay for their care, such as by getting a sponsor who agrees to reimburse the government if the person used Medicaid, or by buying a “public charge bond” of at least \$10,000 that would compensate the government if the person used Medicaid or other benefits named under the proposed rule.

There are already strict tests about when lawful immigrants can get Medicaid. Most adult immigrants cannot get Medicaid for the first five years after they are lawfully present in the United States. Some states make exceptions to this five-year bar for children and pregnant women. (A few groups of immigrants, such as refugees and asylees (people who are seeking or have been granted political asylum), can get Medicaid earlier, but they are not subject to public charge determinations. If, however, a refugee or asylee changes their status to a different grounds of eligibility—for example, through a family member—they could be subject to a public charge determination.) Thus, the people who would be most affected under the proposal are children, people who have been working in this country for more than five years but whose jobs are not providing health insurance, and elderly people who have been here for more than five years.

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Under the proposal, only four small and atypical sub-parts of Medicaid would not count toward a public charge determination:

- » Emergency Medicaid, which is not a form of insurance but rather is used to reimburse hospitals and emergency departments for low-income uninsured people who have sudden and severe emergencies.
- » Services provided under IDEA, the Individuals with Disabilities Education Act, which reimburses schools for services to children with disabilities.
- » Medicaid provided to foreign-born children of parents who are U.S. citizens, who qualify for citizenship a short time after entering the U.S. (for instance, children who are adopted by U.S. parents would still be able to use Medicaid without it affecting their status.) However, foreign-born children whose parents are immigrants would be targeted.
- » Medicaid provided to members of the military and the Ready Reserves and their spouses and children also would not count.

What about Children Who Receive Medicaid or CHIP?

The proposed rule asks for public comment on whether to include CHIP as a negative factor in public charge determinations. Children in families with low to moderate incomes can get health care through either Medicaid (at lower income levels) or CHIP (at somewhat higher income levels.) The specific income guidelines for the two programs vary by state and by the age of the child.³ In many states, families pay premiums on a sliding fee scale to get CHIP coverage for their children. Under the proposal, a child's receipt

of Medicaid benefits could affect his or her ability to become a permanent resident or get a visa—unless his or her parents are U.S. citizens. Whether a child's participation in CHIP would also be a negative factor in a public charge determination is not yet determined.

How Many People Would be Directly Affected by the Medicaid Provisions?

The proposed rule estimates that nearly 5.7 million people who receive Medicaid are in households that include foreign born non-citizens; as result of the change, the rule's authors arbitrarily estimate that 2.5 percent of these would disenroll or forego enrollment—a total of 142,000 people. But a careful analysis reveals that the number could be much, much higher.

In totality, millions of people will be affected by the public charge proposal. According to the Migration Policy Institute, in 2016, there were 22.5 million non-citizens residing in the U.S. One-quarter of children in the U.S., approximately 18 million children, live with an immigrant parent. In 2016, 1.2 million people attained permanent resident status.

Who would be most affected?

Most affected under the proposal are children, people who have been working in this country for more than five years but whose jobs are not providing health insurance, and elderly people who have been here for more than five years.

Would Elderly People and People with Disabilities be Affected by the Medicaid Provisions?

Yes. The provisions would affect dual eligibles (people who have both Medicare and Medicaid) as well as people who have Medicaid alone. As drafted, the rule would also affect Medicare beneficiaries who get help from Medicaid to pay their Medicare premiums (through the Medicare Savings Program, also known as the Qualified Medicare Beneficiary program (QMB) or the Specified Low Income Medicare Beneficiary program (SLMB). The rule does not specifically mention the QMB and SLMB programs, but they are part of Medicaid, and so they would be affected.

This provision could suppress participation by lawful immigrants in Medicare Part B and could also inhibit their use of medical care, given the lack of access to cost-sharing help to which seniors and people with disabilities are otherwise entitled.

How Would Proposed Rules About Medicare Part D Target the Elderly and People with Disabilities?

Medicare Part D helps older people and people with disabilities purchase prescription drugs. In general, to get Medicare Part D, immigrants must be over 65 (or disabled for at least two years) and must be lawful permanent residents who have lived in the U.S. for at least five years. Some lawfully present individuals who do not have permanent status (such as people with Temporary Protected Status) are also eligible if they have paid into Social Security for many years or if they have End Stage Renal Disease. Medicare beneficiaries whose incomes are under 150 percent of poverty (\$18,210 for an individual and \$24,690 for a couple) and who have low resources may qualify for

“extra help” with Medicare Part D: their premiums and cost sharing are set on a sliding fee scale.

Under the proposal, someone who uses this “extra help” to lower their Part D premiums and deductibles could be considered a public charge. If they left the country to visit a relative for an extended period of time, they might not be able to get a visa to return. Fear of becoming a public charge could leave older immigrants and those with disabilities without affordable access to prescription drugs, even though they have worked and paid into Medicare and Social Security.

People with Medical Conditions or Disabilities Would Face Additional Barriers, Even Without Considering Program Enrollments

Under the proposed rule, a medical condition that is likely to affect a person’s ability to attend school or work would also weigh against them. The same would be true for any condition that might require extensive treatment or institutionalization in the future. In making their determination, DHS would consider whether the person has private insurance or other financial resources for treatment and support, or whether the person would need public help. This test could keep a family member out of the country or keep them from getting permanent residency status. Lawful permanent residents may be barred from bringing their own children to join them in the U.S. due to their medical conditions. For instance, if one parent had successfully come to the U.S. to forge a way for the family and begin work, and then sought to bring his or her spouse and child, the child’s medical condition could prevent the family from reuniting in this country.

Other Aspects of the Proposal Would also Affect Health

SNAP benefits help families and the elderly get nutritional meals. Housing assistance helps people avoid homelessness and other substandard living conditions that endanger health and safety. In combination, this proposal will prevent immigrants from getting supports that help make our nation a healthier and better place to live.

Altogether, the proposal is likely to have a chilling effect on immigrants' receipt of many benefits. People will be uncertain about which benefits do, and do not, count against them, and so they will forego benefits and services that would otherwise help them and their families. Even immigrants who are not subject to this rule will, out of fear, be deterred from receiving benefits that they are entitled to. We have already seen evidence of this impact, based solely on the version of the rule that was leaked in April 2018.⁴

The proposed rule would also have significant implications for non-immigrants: for example, about 17 percent of all health care workers and nearly one-fourth of health care support workers, such as nursing aides and home health aides, are immigrants—and all too frequently, their jobs do not provide them with health insurance.⁵ Communities will suffer if many immigrants must wait until they have dire emergencies to get health care, imperiling their own lives and straining the health care system.

The Proposed Rule's Own Claims Regarding Impact on Health and the Health Care System

The proposed rule itself acknowledges that it will have damaging consequences, including:

- » “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 US 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; and
- » Reduced productivity and educational attainment.”⁶

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How to Comment

You can comment on the proposed rule at <https://www.regulations.gov/document?D=USCIS-2010-0012-0001> before December 10, 2018. Besides talking about the negative impact this rule will have on immigrants and families, it is important to explain how this proposed rule will result in problems for the health care system, for your community, and for the economy. Provide data and copies of relevant studies, if you can (such as *Increasing Access to Health Insurance Benefits Everyone: Health System Impacts*; and *Increasing Access to Health Insurance Benefits Everyone: Economic Impacts*,⁷ both prepared by the National Immigration Law Center). Perhaps you have a family member who was born abroad, and you could also comment about how this rule would impact them,

or would have impacted your ancestors when they first arrived in the U.S. Or you could comment on how this will affect your community, including its health, charitable resources, and the health care system.

This rule isn't just an ill-conceived policy that will harm our country's economy, tear apart thriving communities, and increase costs on our already expensive health care system. It is an affront to the very values we hold most dear: family, opportunity, and freedom. America is bigger, stronger, and kinder than this small-minded and callous proposal.

Protect Immigrant Families has more resources that explain the rule and include a link to sample comments here: <https://protectingimmigrantfamilies.org/>

Comment on the Proposed Rule

Before December 10, 2018: <https://www.regulations.gov/document?D=USCIS-2010-0012-0001>

Endnotes

¹ Department of Homeland Security (DHS), *Table 6. Persons Obtaining Lawful Permanent Resident Status By Type And Major Class Of Admission: Fiscal Years 2014 To 2016* (Washington, DC: DHS, December 18, 2017), available online at <https://www.dhs.gov/immigration-statistics/yearbook/2016/table6>. See Table 4 of the proposed rule for a listing of non-immigrant categories subject to this rule.

² Eliot Fishman, *Looming Public Charge Draft Threatens Coverage for Millions* (Washington, DC: Families USA, (September 7, 2018), available online at <https://familiesusa.org/blog/2018/09/looming-public-charge-draft-threatens-coverage-millions>

³ Kaiser Family Foundation (KFF), *Medicaid and CHIP Income Eligibility Limits for Children as a Percent of the Federal Poverty Level* (Washington, DC: KFF, January 1, 2018), available online at <https://www.kff.org/health-reform/state-indicator/medicaid-and-chip-income-eligibility-limits-for-children-as-a-percent-of-the-federal-poverty-level/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

⁴ Fishman, op cit.

⁵ Szilvia Altorjai and Jeanne Batalova, *Immigrant Health-Care Workers in the United States* (Washington, DC: Migration Policy Institute, June 28, 2017), available online at <https://www.migrationpolicy.org/article/immigrant-health-care-workers-united-states>.

⁶ Inadmissibility on Public Charge Grounds, § 83 FR 51114 (October 10, 2018), available online at <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>

⁷ Both referenced studies are available online at <https://www.nilc.org/issues/health-care/health-consequences-of-being-uninsured/>.

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