

AACHC fact sheet regarding the public charge proposed rule

**This is general information and is not legal advice.*

What is Public Charge? “**Public charge**” is defined as an individual who is likely to become “primarily” dependent on the U.S. government for their basic needs to survive. Until now, this rule has applied to the receipt of either public cash assistance for income maintenance, or institutionalization for long-term care at government expense.

Note: Public charge has been part of U.S. immigration law for more than 100 years as possible grounds for denying admission into the country or for deportation or to determine if an individual is ineligible to become a legal permanent resident. However, receiving public benefits has not and does not automatically make an individual a public charge

On Sept. 22, the [U.S. Department of Homeland Security \(DHS\)](#) posted an advance copy of the Notice of Proposed Rulemaking (NPRM) related to the public charge ground of inadmissibility, before formally publishing it in the NPRM in the *Federal Register*. This is the first step to broadening the types of programs that can be considered for denying permanent legal status or denying a green card making a rule change on Public Charge.

This is an important issue for Community Health Centers and other healthcare providers due to the inclusion of Medicaid and possibly CHIP benefits in the determination of whether or not an applicant is considered a public charge. As more misinformation is disseminated it will negatively impact CHC patients and the communities that the CHCs serve.

What do you need to know about the proposed changes to public charge?

- The “public charge test” **applies only at the time a person’s application to become a legal permanent resident (a “green card” holder)**. Primarily, this affects people who are seeking to obtain a green card, either inside the U.S. or at a U.S. consulate abroad, based on a family-based immigration petition.
- The public charge test **does not apply to refugees, asylees, and people who have received humanitarian visas** (Special Immigrant Juvenile, VAWA self-petitioners, U visas, T visas). **It does not apply to legal permanent residents renewing their residency or applying for citizenship.**
- The current draft (published September 22, 2108) does NOT change current law. It is still a proposal to change the rules. The rule will be posted on October 10, 2018 on the Federal Register for comments and will be open through December 10, 2018. The agency will then have to review and reply to each comment which will lead the rulemaking process to expand over several weeks, perhaps months.
- Programs considered in the current proposal include:
 - Supplemental Security Income (SSI)
 - Temporary Assistance for Needy Families (TANF)
 - State or local cash assistance
 - Supplemental Nutrition Assistance Program (SNAP)
 - Section 8 housing assistance
 - Medicaid (AHCCCS [Arizona Health Care Cost Containment System] in Arizona)
 - Except for emergency services and school-based benefits to children
 - Long-term care
 - Financial assistance under Medicare Part D
 - Subsidized housing
 - *The Children’s Health Insurance Program (CHIP; KidsCare in Arizona) is not included, but could be part of the final rule*
- **At this point, there is no reason for people to stop benefits that they or their families currently**

receive legally.

- The draft proposed rule makes it clear that any changes to the consideration of benefits use will apply only to benefits received after the rule is final (***it is not retroactive***). Even if the rules change, applicants will still be able to show why they are not likely to become a public charge in the future.
- If, or when, the rule change goes into effect, immigration officials will still be required to look at “the totality of circumstances” that relate to noncitizens’ ability to support themselves, including their age, health, income, assets, resources, education/skills, family to support, and family who will support them.
- Past and current use of public benefits is only one of many factors that can prove an immigrant may become a public charge, and no one factor is definitive. Any negative factor, such as not having a job, can be overcome by positive factors, such as having completed training for a new profession. Even if this proposed rule were to go into effect, receiving a public benefit does not automatically mean a denial of an immigration application.
- **Immigrants who are concerned about the impact of using public benefits on their immigration case should get advice from an immigration attorney or accredited representative.** To find organizations that offer low-cost immigration legal services, visit [the Immigration Advocates’ Network directory](https://www.immigrationadvocates.org/nonprofit/legaldirectory/search?state=AZ).
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The following services have never been considered public benefits for the purposes of the public charge test and the draft does not propose to change that:

- Using food banks, community health centers (including the sliding fee scale) and public libraries
- Attending a K-12 public school
- Calling 911, the police or the fire department in case of an emergency
- Drawing on any benefits that have been earned through work or military service, such as Social Security for retirees, veterans’ benefits, and Medicare.

What’s next?

- The Notice of Proposed Rulemaking was reviewed by the Office of Management and Budget. The proposed regulation will be published on October 10, 2018 in the Federal Register, and the public will have until December 10, 2018 to submit comments on the rule. Individuals and organizations can submit public comments and share stories about how the proposed rules would affect them and the communities they serve. AACHC will share the link to submit comments once the comment period is open.
- In Arizona, the Children’s Action Alliance is collecting stories and anecdotes about the on-the-ground effects of this leaked information and any eventual rulemaking. Please document any calls and walk-ins who express concerns; these stories will be used confidentially to support public advocacy in opposition to these proposed changes. If you have stories to share, please contact Dora Vasquez at doradv@yahoo.com.
- Nationally, the National Immigration Law Center (NILC) is collecting impact stories and anecdotes at publiccharge@nilc.org.
- **Submit comments at** www.regulations.gov/document?D=USCIS-2010-0012-0001

Contact Us

Please reach out to us directly if you have further questions, would like more resources, or to schedule a representative from AACHC to give a presentation regarding public charge.

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More resources online at <https://aachc.nationbuilder.com/publiccharge>