

What you need to know: The Public Charge Rule and Immigrant Families

On September 22, 2018, the Department of Homeland Security posted a proposed new immigration rule changing the definition of who may be considered a “public charge” in the U.S. “Public charge” is a term used in immigration law to refer to a person who is likely to become primarily dependent on government benefits to meet their basic needs. The proposed rule, if enacted, would make significant and harmful changes to immigration law and discourage many immigrants from accessing programs that help them meet their basic food, housing, and healthcare needs.

What is the “public charge” test?

The public charge test only applies to a small subset of non-citizens and it only comes into play at limited times. **The “public charge” test is never applied to refugees, asylees, applicants for a green card under the Violence Against Women Act (VAWA), and other protected categories (U and T visa applicants, children seeking Special Immigrant Juvenile Status, etc.).** Further, the government only tests for public charge status at three possible times: (1) when a person applies to immigrate to the United States from abroad; (2) when a person applies to adjust status to become a Lawful Permanent Resident (green card holder); or (3) if a green card holder leaves the United States for more than six months and tries to reenter the United States. **The test does not apply when renewing a green card. The test is not used when applying to become a U.S. citizen. The test does not apply to U.S. citizens.**

Under the current public charge rule, immigration officials may consider a person to be likely to become a “public charge” if they receive Reach Up (Temporary Assistance for Needy Families), Supplemental Security Income, General Assistance (or other state cash assistance programs), or long-term institutional care paid by the government (e.g., Medicaid to stay in a nursing home). The newly proposed rule would add the following benefits into the public charge test: (1) any health coverage through Medicaid other than emergency Medicaid; (2) 3SquaresVT (the Supplemental Nutrition Assistance Program or “food stamps”); (3) the low income subsidy for prescriptions under Medicare Part D, and (4) HUD-subsidized rental assistance, including the Section 8 Housing Choice Voucher program, Project-Based Section 8, and public housing. Benefits received by other family members (like citizen children) are not considered in the test.

Again, the “public charge” test would not apply to refugees, asylees, persons applying for citizenship – many of the non-citizens here in Vermont.

Advising Non-Citizen Families

If an individual or family is receiving benefits to go to the doctor, pay for food, or pay rent, they absolutely do not need to stop getting their benefits. The proposed rule is not yet final and if it is finalized, it will not be in effect for months. If the proposed rule is implemented, it will not be retroactive.

No one should terminate their benefits or decline to apply because of the proposed change to the public charge rule. **If you, a friend, or a client is considering terminating benefits or declining to apply because of the proposed change, please consult with an attorney, like the South Royalton Legal Clinic or Vermont Legal Aid, or a nonprofit serving immigrants, like the Association for Africans Living in Vermont or the Vermont Refugee Resettlement Program.**

Take Action

You can take action to fight this proposed change and to protect our non-citizen residents.

Fight back! We can all speak up and oppose this rule change.

Let the government know that this rule does not reflect your values and that it would harm you, your family, your community, and our country. Join us by submitting comments on the proposed change. The government must consider all unique comments submitted, and responding to a barrage of comments will take the government weeks or even months. If changes are made in response to the comments, it will take longer for the rule to start, and Congress may slow down or block the rule. Comments are due by December 10, 2018. Go to <https://protectingimmigrantfamilies.org/#take-action> to submit a comment, and to get more information, go to www.protectingimmigrantfamilies.org.

