



Center for Public Representation



How the Proposed Public Charge Rule Will Hurt People with Disabilities

On October 10th, the federal government issued a proposed public charge rule. The rule defines how the Department of Homeland Security (DHS) decides who is inadmissible to the United States because the government thinks he or she is likely to become a public charge. “Public charge” means that the government thinks you will depend on government benefits to meet your needs.

The public charge rule will discriminate against immigrants with disabilities and their families trying to enter the U.S. (get a visa) or get a green card (become a permanent resident). The proposed rule is unfair and bad policy for this country. The rule is open for public comment through December 10th. It is important for the disability community to make our voices heard!

Current Law and What the Proposed Rule Would Change

The public charge determination is based on a totality of circumstances test, which means there is no single deciding factor and that DHS considers all the relevant factors and information to make a decision. The current law establishes the following minimum factors to consider for public charge: age; health; family status; assets, resources, and financial status; and education and skills. What has changed is that the proposed rule sets new strict standards, evidence DHS looks at when considering the factors, and how these factors are weighed. The rule also greatly expands who will be considered a “public charge.” Right now, only individuals who are “primarily dependent” on cash assistance (such as TANF, SSI or general assistance) or government-funded long-term care are considered public charges. The rule greatly expands the types of benefits included in the test and dramatically lowers the threshold for being considered reliant on those benefits. The rule also significantly increases the consideration of an individual’s health and the negative impact that having a chronic health condition or disability has on being determined a public charge. These and other changes in the proposed rule that will most directly impact people with disabilities are described in detail below.

The proposed rule would not change statutory provisions that exempt certain groups of immigrants, such as refugees and asylees, from the public charge determination.

Factors in the Proposed Rule That Would Particularly Hurt People with Disabilities

1. Health: Under the proposed rule, DHS will consider whether a person’s health makes them more or less likely to become a public charge, including whether they have been “diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with their ability to provide for and care for themselves, to attend school, or to work.”

This infosheet focuses on the ways the proposed public charge rule hurts people with disabilities and their families. For more general information about public charge rule, check out <https://protectingimmigrantfamilies.org/resources/>.

In determining the health factor, DHS will look at, but is not limited to, the following types of evidence:

- A report of an immigration medical examination performed by a civil surgeon or panel physician where such examination is required; or
- Other evidence of a medical condition that is likely to require extensive medical treatment or institutionalization after arrival or that will interfere with the immigrant's ability to provide and care for him or herself, to attend school, or to work upon admission or adjustment of status

Whether someone's health will make them a public charge will be decided by DHS predicting outcomes of what a person can and will do based on their diagnosis and other information submitted to DHS, such as an attestation from their treating physician regarding whether a medical condition impacts the ability to work or go to school. Health is only one of several factors in the public charge test, but it is one that explicitly singles out people with disabilities and chronic health conditions.

While health has always been a factor in the public charge test, this rule changes the specific standard for evaluating an individual's health. In addition, as discussed below, the health consideration in the "heavily weighed negative factors" is also new. This new interpretation of the health factor, particularly when combined with the other components in the proposed rule, will in effect exclude people simply because they have a disability.

2. Assets, resources, and financial status: This factor looks at how much money you and your family has, including whether you have used or applied for certain public benefits. Considering benefits for which a person has applied (but not used) is one of the changes from the current test. The proposed rule also dramatically expands the programs and benefits that will be considered in deciding who is a public charge. Many of the programs and benefits included in the new rule are ones that people with disabilities and their families often use, including Medicaid-funded community services.

The only benefits currently included are:

- Supplemental Security Income (SSI)
- Temporary Assistance for Needy Families (TANF)
- General Assistance Cash Benefits (federal, state or local)
- Government-funded Institutionalization for Long-Term Care (including Medicaid)

The proposed rule would add the following additional public benefits:

- All Medicaid-funded services
 - This would include Medicaid-funded community services
 - Only Medicaid for emergency medical conditions, services provided through schools as part of special education, and Medicaid for foreign-born children of U.S. Citizens aren't included
- Premium and cost sharing subsidies under Medicare Part D
- Supplemental Nutrition Assistance Program (SNAP)
- Housing Programs
 - Section 8 Housing Choice Voucher Program

- Section 8 Project-Based Rental Assistance
- Public Housing

The proposed rule also asks if DHS should also include the Children’s Health Insurance Program (CHIP), which provides health coverage to millions of eligible children.

The proposed rule looks at public benefits in a complicated formula of whether their value over a 12-month period is more than 15 percent of the Federal Poverty Guidelines for a household of one (in 2018, that would be \$1,821) or if a family uses some benefits for a certain number of months. Again, it’s a much lower standard than the current rule’s “primarily dependent” on benefits standard. That means that if this rule becomes final, it will take much less to be excluded as a “public charge.”

- **Medicaid, as a part of the assets, resources, and financial status factor:** People with disabilities will be particularly impacted by the broad inclusion of Medicaid-funded services as part of the public charge consideration. Medicaid is the largest insurer for long-term services and supports, mental health care and substance use disorder treatment in this country, filling the gaps left by other insurance plans that are not required to cover many of these services. Most home and community based services are not available through private insurance, and few people have the resources to pay for these costs out of pocket. The proposed rule would consider Medicaid-funded community services in the public charge (the current public charge rule only includes Medicaid-funded institutional long-term care). This would create an unfair choice for people with disabilities. Again, Medicaid is the *only* source for critical community living supports (like personal care services, nursing services, respite, intensive mental health services and employment supports) for people with disabilities; these community services simply aren’t available under private insurance. Many people with disabilities rely on Medicaid to live, work, attend school and participate in their communities.
- **Other benefits, as a part of the assets, resources, and financial status factor:** People with disabilities will also be disproportionately impacted by the inclusion of other programs, including housing and food assistance. Accessible, affordable housing is critical to helping many people with disabilities live in the community. Having a disability can raise expenses and make it harder for people with disabilities and their caregivers to work, which can strain other necessary items like having enough food.

The “assets, resources, and financial status” factor also specifically looks at whether a person’s family can cover any likely medical costs of a person with a disability or health condition. In addition, it separately looks at whether a person with a disability or health condition has private health insurance or resources that would cover all medical costs related to the health condition or disability. Because private insurance does not cover many disability services and people on Medicaid must limit their financial resources to remain eligible, this factor would count against many people with disabilities.

3. Education and skills: This factor looks at a person’s history of employment, degrees earned and related information. Education and employment are areas where many people with disabilities often face significant disadvantages based on their disability. The rule acknowledges

that working people with disabilities contribute significantly to the U.S. economy. This is an important reality. However, unemployment rates for people with disabilities in this country are still drastically higher than those for people without disabilities, and the disparity is even more dramatic internationally. Similarly, many people with disabilities around the world have been denied access to equal educational opportunities, putting them at a disadvantage with respect to this factor. In addition, some people with disabilities need supports to be able to work or attend school and those are typically only available under Medicaid, which would be counted against them under the “assets, resources and financial status” factor discussed above. Thus, many people with disabilities will also be negatively impacted by the “education and skills” factor.

4. Family Status: This factor looks whether a person’s household makes him or her more or less likely to be a public charge. For adults, a “household” includes the person, their spouse, their dependent children, anyone else they support, and anyone who supports them. For children, a household also includes the child’s parents, the parents’ other children, and anyone else their parents are supporting financially. The family status factor, along with the assets, resources, and financial status factor, means that a person’s disability could have an impact on the public charge determination for other family members. Immigrants would be penalized for providing support for other individuals, such as a sibling with a disability.

Heavily Weighed Factors That Would Particularly Hurt People with Disabilities

The proposed rule includes additional factors that weigh heavily toward a finding that an individual is likely to become a public charge. The heavily weighted negative factors include:

- The person is not a full-time student and is authorized to work, but is unable to demonstrate current employment, recent employment history or a reasonable prospect of future employment;
- The person is currently receiving, certified or approved to receive one or more public benefit, as defined in the rule;
- The person has received one or more public benefit within the three years before applying for a visa, admission, or adjustment of status; or
- The person has been (a) diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide for him- or herself, attend school, or work; and (b) is uninsured and has neither the prospect of obtaining private health insurance, or the financial resources to pay for reasonably foreseeable medical costs related to a the medical condition.

Several of these heavily weighed negative factors will apply to many people with disabilities, meaning that many people with disabilities are likely to be seen as a public charge and excluded. These heavily weighed negative factors double down on the impact these circumstances could have. And even though the proposed rule states that a person’s disability will not be the only basis for a public charge inadmissibility finding, the factors and heavily weighed negative factors make it clear it will be very difficult, if not impossible, for a person with a significant disability to avoid being considered a public charge. For example, a person with a disability who would need Medicaid-funded community services (which are unavailable through private insurance) would meet two heavily weighed negative factors.

The rule only proposes one heavily weighed positive factor -- that the household has or will make at least 250% of the Federal Poverty Guidelines. This means that low- and middle income families will not have the benefit of a heavily weighed positive factor as part of their calculation to offset any negative factors.

Finally, the proposed rule also allows for public charge bonds, which can overcome some negative factors in the totality of circumstances test. Some people who are initially refused based on public charge may be offered the opportunity to post a public charge bond so that they could still be admissible. However, the proposed rule says the option of a public bond is unlikely to apply if a person has even one of the heavily weighed negative factors. For example, a person found to be a public charge based on their disability and the need to use Medicaid for services not covered by private insurance would probably be ineligible for the bond. This is another way that the proposed rule discriminates against people with disabilities. And even where it's offered, the minimum amount of a bond is \$10,000, which means it would be beyond the means of most families.

What You Can Do To Oppose the Proposed Public Charge Rule

The proposed rule is not yet final. The government is seeking public comment on the proposed changes through December 10th. The Administration must read and take into account all the comments they receive. It is critical for the disability community to make our voices heard about why this rule is discriminatory and unfair.

Many people with disabilities – including people with intellectual and developmental disabilities, psychiatric disabilities, or physical disabilities who need personal care services – would be screened out as someone likely to become a “public charge” under the proposed rule. In other words, the proposed rule would in effect exclude people with disabilities *simply because they have a disability* based on the factors and how they are weighed.

In addition, the proposed rule would have indirect effects on people with disabilities, as it could further shrink the number of available home care and other direct support workers – many of whom are immigrants who often rely on publicly-funded programs due to low wages – leading to a loss of independence and community integration for people with disabilities.

The proposed rule also discourages the use of important public programs and benefits. Families may decide not to use critical public services they are eligible for out of fear of harming their immigration status. The preamble to the rule even acknowledges that this response would hurt pregnant and breastfeeding women, infants, and children, and have other harmful impacts. People may be less able to take prescribed medications and will put off medical care, resulting in more emergency room visits, increased disease, more uncompensated care, and strains on the health care system. The rule would also increase poverty and housing instability.

Learn more about the public charge rule and resources on how to comment at:

<https://medicaid.publicrep.org/feature/public-charge/> and:

<https://protectingimmigrantfamilies.org/>. You can also comment directly on the impact of this rule on people with disabilities here: <http://bit.ly/2Q0iuzm>. Comments are most effective if they are unique, so please use your own words to explain why you oppose this rule.