



The Department of Homeland Security (DHS) has issued a new immigration rule that will impact people with disabilities called the “public charge” rule. They claim the purpose of the rule is to keep out people who have used, or may even one day use, certain government benefits. Disability rights, immigration, and healthcare groups strongly oppose the rule and believe it is illegal; they have sued to stop it. The lawsuits succeeded at first in delaying the rule from going into effect but then the Supreme Court, in a pair of 5-4 decisions, decided to allow the rule to go into effect while the lawsuits continue. The rule went into effect on **February 24, 2020**.

Since then, the rule has been temporarily paused at times, but as of November 3, 2020, **the rule is in effect nationwide** while lawsuits to stop it continue.

Given the uncertainty around the future of the rule, it is vital that people understand what the new public charge rule does and does not mean. The new rule has already created confusion and fear about using critical government benefits to which people are entitled. The new rule only applies to certain changes in immigration status, to the use of specific government benefits, and only to immigration (and not deportation) determinations. You should consult an immigration lawyer before deciding not to use benefits to which you are entitled.

What is the public charge rule?

The new public charge rule makes changes to existing policies meant to determine if someone’s application for a visa to enter the country or to change their residency status will be approved.

Whether someone is considered likely to become a public charge – meaning reliant on government benefits – has long been used as a basis to deny someone admission to the US. However, the new rule expands what benefits may be considered in making that decision and adds new factors that weigh positively for or negatively against an applicant, including around a person’s health status.

What benefits are considered in making public charge determinations under the new rule?

The public charge rule will apply to you if:

- You are trying to get a visa or a green card
AND
- You use or are determined to be likely to use certain government benefits

Under the previous policy, only substantial reliance on cash benefits or Medicaid-funded long-term institutional care counted against someone in considering whether to grant them a visa or a green card. The new rule considers a much broader range of benefits and lowers the threshold for the amount of these benefits that a person can use before being considered a public charge.

Under the new rule, use of the following benefits will be considered:

- Cash benefits, including:
 - State and local cash assistance programs
 - Temporary Assistance for Needy Families (TANF)
 - Supplemental Security Income (SSI).

- Non-emergency Medicaid services, including Home and Community Based Services (HCBS)
- Supplemental Nutrition Assistance Program (SNAP)
- Section 8 Housing Assistance
- Public Housing

The new rule does not consider:

- Benefits used before the rule went into effect that would not have been considered if the rule hadn't gone into effect
- Benefits received by active duty service members or their spouses and children
- Benefits sought for eligible family members
 - Only benefits received by the individual applicant will be considered
- Use of Medicaid by pregnant women or people under the age of 21
- Non-cash benefits that are funded by your state or local government
- Testing, treatment, or preventative care (which will include vaccines, if developed) related to COVID-19, even if paid for by benefits that would otherwise be considered, such as Medicaid

How is health status considered under the new rule?

While the new rule looks at many different factors to determine whether to grant someone a visa or green card, its focus on an applicant's health is likely to particularly impact people with disabilities. The rule considers as a negative factor having a medical condition that is "likely to require extensive medical treatment or institutionalization or that will interfere with the [person's] ability to provide and care for himself or herself, to attend school, or to work upon admission or adjustment of status." This broad definition will sweep in almost all people with disabilities.

The new rule also looks at whether someone has private insurance that can cover all expected future medical costs. This heavily weighted negative factor will weigh against most people with disabilities because home and community-based services, which are critical services that help people with disabilities live and participate in their communities, are almost exclusively provided through Medicaid and are not covered by private insurance.

Who is not affected by the rule?

The new rule excludes:

- Green card holders who are seeking US citizenship
- Refugees
- Asylees
- VAWA self-petitioners
- T or U visa holders
- Special Immigrant Juveniles

Additional Resources:

For more information about the rule and its impact on people with disabilities, as well as updates on litigation challenging the rule, please visit our website at: <https://medicaid.publicrep.org/feature/public-charge>. The Protecting Immigrant Families Campaign has additional resources for individuals who may be impacted at: <https://protectingimmigrantfamilies.org/know-your-rights>.