

## The DHS “Public Charge” Proposed Rule: Potential Consequences for Immigrant Families and the Entities That Serve Them

On Oct. 10, the Trump administration published a [“public charge” proposed rule](#) in the Federal Register for the Department of Homeland Security (DHS).<sup>1</sup> The DHS proposed rule would have broad implications, particularly for clients such as hospital systems, community health centers, non-profit organizations and coalitions that provide direct services or assistance in accessing certain aid programs currently available to low-income immigrants.

### Definition of “Public Charge”

Under the Immigration and Nationality Act (INA), an immigrant may be denied admission into the US or adjustment to LPR status if they are likely at any time to become a “public charge.” Although the INA does not explicitly define the term “public charge”, agency guidance dating back to the 1990s has defined it to refer to an individual who is or is likely to become “primarily dependent” on “public cash assistance for income maintenance” or “institutionaliz[ed] for long-term care at government expense.”<sup>2</sup>

However, the recent inclusion of public aid programs such as Medicaid, Medicare, Federal housing assistance and supplemental nutrition assistance program (SNAP) vouchers, among others is a new and recent development. If finalized, the DHS’s US Citizenship and Immigration and Service (UCIS) would likely deem any documented immigrant (with key exceptions)<sup>3</sup> a “public charge” if they receive any of the below types of federal assistance:

### Current “Public Charge” Benefits

Under the current policy, the only benefits considered in the “public charge” determination include:

- Public cash assistance for income maintenance (e.g. Supplemental Security Income (SSI))
- Temporary Assistance for Needy Families (TANF) and comparable state or local programs
- Government-funded long-term institutional care

### New and Additional “Public Charge” Benefits for Inclusion Under the Proposed Rule

The proposed rule would expand the types of benefits considered in a “public charge” to also include:

- Non-Emergency Medicaid (with limited exceptions for disability services offered in schools)
- Supplemental Nutrition Assistance Program (SNAP)
- Medicare Part D Low Income Subsidy, which aids in purchasing medication assistance

<sup>1</sup> <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>

<sup>2</sup> Sept 19, 2018- Singer, A. & Harrington, B. (2018) Immigration: Frequently Asked Questions about “Public Charge” (CRS Report No. R454313). Retrieved from the Congressional Research Service website: <https://fas.org/sgp/crs/homesecc/R45313.pdf>

<sup>3</sup> Immigrants groups classified as refugees and asylees are among the protected groups exempt from the application of the “public charge” determination and would not be affected by the proposed rule if they seek a LPR adjustment in their status.

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- Federal Housing Assistance ( e.g. Public Housing, Section 8 housing vouchers and Project Based rental assistance)

PLEASE NOTE: The DHS has requested input on the inclusion of the Children's Health Insurance Program (CHIP), but this program was not included in the published proposed regulatory text.

**Next Steps and Congressional Outlook**

The proposed regulation will be subject to a 60-day public comment period until December 10, 2018. DHS will then review and consider the comments received and may make revisions. The final rule process is expected to extend into 2019, leading into the new Congress.

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