

“On Hold” in the Courts: Update to 10 Things Texans Need to Know about the Federal “Public Charge” Regulation

By Anne Dunkelberg

1) What is the new public charge rule? It’s a new U.S. Department of Homeland Security rule that would—if it takes effect— make it harder for people to go through the lawful immigration process and get a green card (also known as Lawful Permanent Resident status or LPR). The rule governs under what conditions immigration authorities can turn down a person’s application for lawful immigration status. Specifically, the rule allows denial of a person’s application if they would rely too much on government support, what historically was known as being a “public charge.”

Since 1999, only two public benefits would bar a prospective immigrant: (a) total reliance on government cash assistance or (b) total reliance on government institutional care (such as a nursing home). But the federal administration wants to make big changes.

2) The new public charge rule is NOT in effect. Federal officials released a proposed federal rule change for public comment in October 2018, and a modified “final” version was published 8/14/2019. ***That rule was scheduled to take effect on 10/15/2019, but [five different courts issued injunctions that stopped the rule from taking effect](#), and three of those injunctions are nationwide.*** So, the rule has not taken effect, and “old” 1999 policies are still in force.

At present, there is no way to know how long we will wait before a decision is final. The courts could completely stop the rule, or it could take effect some day in the future.

3) Who would be affected? Narrowly, the public charge rule applies to any immigrant trying to get a green card (Lawful Permanent Resident status), or any person seeking a visa to enter the U.S. from another country.

4) Many types of immigrants would not be affected. The public charge test does NOT apply to:

- Lawful Permanent Resident status (green card holders) applying for citizenship, or renewing their green cards
- Refugees and asylum seekers
- Several other humanitarian categories, including Violence Against Women Act (VAWA) petitioners and domestic violence and human trafficking survivors (U or T visa)
- Special Immigrant Juvenile status (used for children in foster care)

If the proposed rule ever does take effect in the future:

Items 5-10 below explain the potential effects IF the rule takes effect in the future.

5) What would the new rule change? Since 1999, only (a) total reliance on government cash assistance or (b) total reliance on government institutional care (such as a nursing home) would exclude a prospective immigrant.

The new rule is much more restrictive. **If** the rule ever takes effect, the “public charge test” would also consider whether the applicant has used, or is likely to use specific benefits in the future. **These are: Federal, state, local and tribal Cash Assistance; Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps); Public Housing or Section 8 Housing Vouchers and Rental Assistance; or adult Medicaid.**

IMPORTANT:

- (a) **Medicaid use for emergency services, for pregnant women and new mothers, or for children under age 21 will not count against immigration applicants.**
- (b) **Only the benefits listed above** would be added to the Public Charge test if the new rule takes effect. No others (not the Women, Infants and Children (WIC) Program, the Children’s Health Insurance Program, school meals, Head Start, etc.)

The rule would give preference to wealthier, more-educated immigrants, and penalize lower-income, less-educated, or less-healthy immigrants. Applicants would have a harder time getting through the lawful immigration process if they have a family income below 250 percent of the federal poverty income, which in 2019 is less than \$65,000 a year of income (pre-tax) for a family of four. Immigration officials will also consider the green card applicant’s positive or negative “totality of circumstances” including the applicant’s age, health, family status, education, job skills, and assets.

6) The new rule does NOT look at whether a family member has used public benefits, only benefits used by the individual applicant. Early drafts of the proposed rule did propose to hold use of public benefits by a U.S. citizen child against a parent’s green card application, so this is a very important change, and many Texas families may not have this information. ***This means that it will NOT benefit a green card applicant to have their U.S. citizen or green card holding family members drop their own SNAP, Medicaid, or housing benefits.***

Fear of using benefits is widespread, however, even for U.S. citizen family members. It is critical that Texans spread the word that immigrants’ family members should continue using their important public benefits. Many families have already been scared into dropping important benefits. Both Children’s Medicaid and SNAP (food stamps) have seen [significant enrollment drops](#).

7) If the new rule took effect, the public charge test would look at the green card applicant’s use of benefits (a) AFTER the rule took effect, and (b) also guess at the applicant’s likely FUTURE use of the newly listed benefits. Immigration authorities would only take SNAP, adult Medicaid, or housing benefits used **by the applicant** on or after the effective date into account. The only exception is cash assistance or long-term care benefits, because they were already considered under the “old” public charge rule.

Once the rule takes effect, an applicant who has used SNAP, Medicaid, or housing benefits for a combined total of 12 months out of any 36-month period will have that use considered “a heavily weighed negative factor” in deciding whether someone is likely to become a public charge. Receiving two of these programs, such as SNAP and Medicaid, in a single month, will be counted as two months. **Again, it’s important to note that their own use of Medicaid for emergency services, for pregnant women and new mothers, or for children under age 21 will not count against immigration applicants.**

8) Simple answers are not always possible, and the rule affects more Texans than just green card and visa applicants.

One example of the complexity that adds to community fears: The U.S. has different policies for immigrants whose green card interview is inside the U.S. (through the Dept. of Homeland Security) versus those having the interview outside the U.S. (through U.S. Dept. of State consulates). That means we **cannot** give mixed-status families a simple “use of benefits by your family members won’t affect your legal immigration.” Instead, we **must** say that it depends on whether the individual seeking the green card is interviewing for green card inside or outside the U.S. (for the time being).

As a practical matter, just the threat of the new rule has already affected many more Texans than just those with active green card applications. Unfortunately, many other immigrants—including Lawful Permanent Residents and others—fear that use of benefits for health care, housing, or hunger prevention by their family members who are U.S. citizens or who already have their own green card (LPR status) will hurt the applicant’s ability to get a green card, or will stop a green card holder from becoming a U.S. citizen. **This is misinformation.** This fear has put whole families at risk of neglecting basic needs to be healthy, successful in school and productive, in order to keep the family united.

9) How many Texans may be affected? The numbers are sobering:

5.6 million Texans live in a family [that includes at least one non-U.S. citizen](#) (of any immigration status). Because of the fear spreading through families where any family member is not a U.S. citizen, all of these 5.6 million Texans could somehow be affected.

- About 1.9 million of these are kids age 17 or younger, of whom the great majority—about 1.65 million—are U.S. citizen children. ***That’s more than one in every four Texas children.***
- 3.9 million of those Texans have family incomes targeted by the new rule (under 250 percent of the federal poverty income), which in 2019 is less than \$65,000 a year pre-tax income for a family of four.ⁱ
- A growing [body of national research](#) and Texas tracking ([link to updated PC slide deck](#)) shows that many families have already dropped benefits (including for children).

10) Immigration legal assistance agencies and lawyers can help. Many families are exempt from the public charge rule but may need a qualified and trusted expert to accurately advise on that. Free and low-cost help is available to understand whether the rule affects a specific person or family.

Organizations across Texas can either provide legal advice to applicants who are subject to the rule or refer them to other qualified immigration attorneys. Find a statewide list of Texas immigration legal services providers [here](#).

The Center for Public Policy Priorities and Children's Defense Fund—Texas are partnering to make technical assistance and support available to organizations, local governments, institutions who need access to reliable information for training, and for community education. Here are slides ([link to updated PC slide deck](#)) and [background resources](#) with more information. Email dunkelberg@cphp.org or canderson@childrensdefense.org for more.

ⁱ [Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard \(Manatt\)](#)