**What is New?**

On February 24, 2020, the U.S. Department of Homeland Security (DHS) implemented a new rule on “public charge.” The new rule redefines public charge and significantly changes how DHS determines if a person is likely to need financial assistance from the government.

Public charge is now defined as a person who is more likely than not to receive any of nine specified public benefits for more than 12 months in aggregate within any 3-year period.

The rule includes a long list of factors that may be taken into consideration, either positively or negatively, when determining a person’s likelihood of using the specified public benefits in the future. Some of these factors include the applicant’s age, health, income, and education.

The determination of public charge is made by an immigration officer who has broad discretion to weigh all of the factors. No single factor will determine the outcome of the officer’s decision, but some factors are identified as being more heavily weighted in the consideration.

**Who is Impacted?**

All applicants for admission to the United States or “adjustment of status” are subject to the public charge rule – unless they are specifically exempted. Adjustment of status is the process that immigrants can use to apply to become a permanent resident (or Green Card holder) when they are already in the U.S.

The people most affected by the new rule are those seeking lawful permanent resident (LPR) status based on a family relationship. The vast majority of non-citizens who obtain a green card get that green card based on a petition filed by a U.S. citizen or permanent resident family member.

**Who is Not Impacted?**

Many are not subject to the public charge rule. The most common exceptions are:

* U.S. Citizens, including naturalized citizens
* Applicants for Citizenship (Naturalization)
* Lawful Permanent Residents (note: Rule may apply if an LPR leaves the U.S. for more than 180 days.)
* Asylees and Refugees
* U Visa (Victims of Crime) and T Visa (Victims of Trafficking)
* VAWA Self-Petitioners
* Special Immigrant Juveniles (SIJ)
* Applicants seeking Temporary Protected Status (TPS)
* A complete list is at 8 C.F.R. § 212.23 in the final public charge rule.

**What Benefits are NOT Considered?**

Any benefits not on the specified list are not considered in the public charge test.

Examples of programs or benefits not considered are: FAMIS (CHIP program), Medicare, Ryan White HIV/AIDS program, Title X-funded programs, use of Federally Qualified Health Centers, Emergency medical assistance (including Emergency Medicaid), Disaster relief, WIC, School breakfast and lunch, and EITC.

Any benefits received by an immigrant’s family members are also not considered in the rule.

**What are the nine designated public benefits and when is their receipt a factor?**

Any past receipt of the following programs is a negative factor:

1. Supplemental Security Income (SSI)
2. Temporary Assistance to Needy Families (TANF)
3. State or local general relief or general assistance, and
4. Institutionalization for long-term care.

Any receipt of the following programs after February 23, 2020 is a negative factor:

1. Non-emergency, federally funded Medicaid (exception for children under 21, pregnant women including 60 days of post-partum coverage, and active duty members of the U.S. Armed Forces and their families)
2. Supplemental Nutrition Assistance Program (SNAP or “food stamps”)
3. Public Housing
4. Section 8 Housing Choice Voucher Program and
5. Section 8 Project-Based Rental Assistance.

**The New Process to Determine if a Person will Become a Public Charge**

If an applicant has received any of the specified health, nutrition, or housing benefits for more than 12 months in the aggregate in any 36-month period, this weighs heavily in favor of finding the person to be more likely to become a public charge in the future.

But – it is important to remember that **prior receipt of benefits is only one factor** in the public charge test to determine if in the **future** a person is more likely than not to receive any of nine specified public benefits.

Examples of Negative Factors Also Include:

* Older than 61 years of age
* Health condition that could affects ability to work, attend school, or care for oneself
* Total income less than 125% Federal Poverty Level
* No Health Insurance
* No English Proficiency
* Liabilities
* No job skills
* No High School Diploma

Examples of Positive Factors Include:

* Age between 18 and 61
* Healthy (no Class B certification)
* Total income greater than 250% FPL
* Private Health Insurance
* Credit Score Greater than 670
* Employed, job history
* High school degree
* Proficient in English

**Being Uninsured is Considered a Negative Factor by DHS**

Many health coverage options available to immigrants affected by the new rule, including Medicaid for children and Medicaid for pregnant women, are viewed by DHS as positive factors. Immigrants with health coverage and/or resources to pay for medical costs are viewed by DHS to have a lower likelihood that they will become a public charge at any time in the future.

Coverage Options Viewed Positively by DHS

1. Employer-Based Health Insurance (including Tricare and insurance through government employment)
2. Private Health Insurance through the Marketplace (with and without premium tax credits)
3. Medicare
4. Private Health Insurance bought or paid for (outside of Health Insurance Marketplace)
5. State only subsidized Health Insurance
6. Foreign Health Insurance
7. Medicaid for an applicant under 21
8. Medicaid for pregnant women (including 60 days after pregnancy)
9. CHIP (“FAMIS” in Virginia)

Coverage Options Viewed Negatively by DHS

1. Medicaid for applicant over 21 (except pregnant women & 60 days after pregnancy)
2. Medical condition with no insurance or financial resources to pay for medical costs
3. No Health Insurance