



# WASHINGTON STATE Department of Children, Youth, and Families

## Public Charge: Proposed Immigration Policy Changes A Resource for Early Support for Infants & Toddlers Providers

Immigrant communities are facing a number of federal policy changes that will impact their ability to access important services and reside in the United States. As such, there are widespread fears among immigrant families of deportation and other forms of punitive actions taken by the U.S. government. Service providers play a critical role in helping to explain potential impacts of such policy changes. This document is intended to clarify the proposed changes to the federal **public charge** policy.

The U.S. Department of Homeland Security has proposed significant changes to the way the “public charge test” in federal law is applied to immigrants seeking to obtain legal status. The “public charge” test has been part of federal immigration law for more than 100 years. It was created to identify people who may depend on government benefits as their main source of income. If the U.S. government determines someone is likely to become a “public charge,” they can deny admission to the U.S. or refuse an application for lawful permanent residency. The Department of Homeland Security is currently proposing changes to the longstanding “public charge” policy.

### Who does the policy apply to?

This policy does not apply to all immigrant families. The current policy applies to:

- Immigrants in the U.S. applying for family-based visa or legal permanent residence (green card)
- Immigrants seeking to legally enter the U.S.

The current policy does not apply to:

- Legal permanent residents applying for U.S. citizenship
- Many immigrants with legal status including refugees, asylum seekers, survivors of domestic violence, T or U Visa applicants and holders, and children seeking Special Immigrant Juvenile Status

### What could change?

The proposed rule includes a number of changes that will impact applicants. Among the most notable changes are an expansion of the benefits programs to be considered under a public charge determination, as well a new income threshold that may impact low-income households.

Currently, the only benefits considered as evidence an immigrant could become a public charge in the future is if he/she has used cash assistance (such as TANF or SSI) or long-term institutionalized medical care at the government’s expense. The proposed rule would allow the government to also consider the use of other types of benefits that help individuals meet basic needs. These include:

- Non-emergency Medicaid
- Supplemental Nutrition Assistance Program (SNAP)

- Medicare Part D Low Income Subsidy
- Housing assistance, such as public housing or Section 8 housing vouchers and rental assistance

## What about Early Supports for Infants Toddlers Services?

Currently, Part C services are not considered under a public charge determination. Under the proposed rule, services provided under the Individual with Disabilities Education Act, including Part C services, will continue to be exempt from a public charge determination. This means that even if the proposed rule is finalized, **Part C services will not be considered as part of a public charge test**, including those that are billed to Medicaid.

## What's Next?

The proposed rule was announced by the Department of Homeland Security on September 22, 2018 and posted to the Federal Register on October 10, 2018. Individuals and organizations can submit public comments and share stories about how the proposed rules would affect them and the communities they serve through December 10, 2018.

**If a family asks a service provider questions specific to public charge, the following talking points may be useful:**

- **The proposed rule is not current law.** The draft rule cannot be implemented until it becomes final, which will take time. Once comments about the rule are submitted, the review process can take months. In fact, some proposed rules are never finalized. If the rule is finalized, it may not take effect until several weeks or months after the final version is published.
- **The rule will not be retroactive.** This means that benefits -- other than cash or long-term care at government expense -- that are used before the rule is final and effective will not be considered in the public charge determination.
- **The public charge test weighs positive factors against any negative ones.** Even if the rule change goes into effect, receiving a public benefit does not automatically mean a denial of an immigration application. Immigration officials will still be required to look at “the totality of circumstances” that relate to noncitizens’ ability to support themselves, including their age, health, income, assets, resources, education/skills, family to support, and family who will support them. Positive factors can be weighed against any negative factors.
- **A public charge test will not penalize immigrant parents for receipt of benefits by U.S.-citizen children.**
- **Families need to make individual determinations based on their unique circumstances. Immigrant families who are concerned about the impact of using public benefits on their immigration case should get advice from an immigration attorney or accredited representative.** To find organizations in your area that offer low-cost immigration legal services, providers can visit this resource and share the appropriate organizations with families: <https://www.immigrationadvocates.org/nonprofit/legaldirectory/>.