The New Public Charge Rule – What You Need to Know

Main things you should know:

- On August 12, 2020, a federal court entered an order allowing the Department of Homeland Security (DHS) to use its new public charge rule for green card applications filed with USCIS, except for applications filed in New York State, Connecticut, and Vermont. The court left another order in place that bars the Department of State (DOS) from using the new public charge rule for applications filed with U.S. consulates and embassies outside the U.S.

- The public charge test does not apply to all immigrants. It mainly affects people who are applying for Green Card status through a family visa petition (I-130).

- Immigrants subject to the public charge test and their families can use a number of benefits, including most medical programs, without problems.

- You should continue to check for updates on the public charge rules. Many organizations have filed legal challenges that are making their way through the courts, and the situation can change quickly.

What has changed?

On July 29, 2020, a federal court in New York entered a nationwide order barring both DHS and DOS from using new public charge rules that went into effect on February 24, 2020. The order barred DHS from using its new rule so long as there is a declared national health emergency in response to the COVID-19 pandemic. The order barred DOS from using its new rule indefinitely.

On August 12, 2020, the 2nd Circuit Court of Appeals issued a decision limiting the New York court’s order. The new decision:

- allows DHS to use its new public charge rule, except for applications filed with USCIS in New York, Connecticut, and Vermont, and
leaves in place the New York court’s order barring DOS from using the new rule for applications filed outside the U.S.

What does this mean if I will be applying for green card status with USCIS?

USCIS can continue to apply its new public charge rule to green card applications filed in Washington State. The new rule includes many provisions that make it harder for low- and moderate-income people to get their green cards. For example, it makes it more difficult for people with serious medical conditions, or who don’t speak English well, to get green card status.

In addition, the new rule allows immigration officers to consider the applicant’s use of an expanded list of benefits in the public charge test. Those are:

- Cash assistance (from any source)
- Federal food assistance ("SNAP")
- Non-emergency Medicaid (with many exceptions, including Medicaid used by children under 21 and pregnant women)
- Section 8 and public housing

What does this mean if I will be applying for green card status with a U.S. consulate or embassy outside the U.S.?

U.S. consulates and embassies must use the public charge rule that was in effect before February 24, 2020 ("the old rule"). The old rule does not include many of the provisions of the new rule that make it harder for low- or moderate-income people to get legal status.

In addition, under the old rule, the only benefits that immigration officials can consider in the public charge test are:
• Cash assistance (such as TANF, State Family Assistance, Aged Blind and
  Disabled benefits and SSI); and

• Long-term care in an institution (like a nursing home) paid for by the
government.

**Does the public charge test affect all immigrants?**

No. It mainly affects people applying for green card status through the family visa petition (I-130) process.

Many categories of immigrants are not subject to the public charge test. These include:

• asylees

• refugees

• self-petitioners under the Violence Against Women Act ("VAWA")

• U and T visa holders, and

• Special Immigrants from Iraq and Afghanistan.

**I am applying for a green card through a family visa petition. Are there any benefits program I can safely use?**

Yes. There are many programs officials won’t consider in the public charge test, whether you will be applying for green card status with USCIS or with a consulate abroad. These include:

• many medical programs, including Qualified Health Plans and subsidies,
  emergency Medicaid, and any medical benefits used by children under 21 and
  pregnant women

• testing and treatment for COVID-19

• the state-funded Food Assistance Program

• unemployment Insurance
• Pandemic EBT benefits
• pandemic stimulus payments

**Will it be a problem if my family members use benefits?**

In most cases, no!

If you are applying with USCIS, immigration officials will not consider your family member’s use of benefits.

If you are applying with a U.S. consulate abroad, officials will only consider benefits used by your family members if those benefits are the family’s only source of income (for example, your child receives SSI and no one else in the family has income from employment.)

**Is the use of benefits the only thing immigration officials consider in the public charge test?**

No. Under the law, they must also look at several other factors. These include the immigrant’s:

- income (money from work or other sources) and resources (things the immigrant owns)
- health
- education and skills
- family status (including the number of family members in the home)
- the affidavit of support filed on the immigrant’s behalf

**I’m afraid to use medical benefits. What should I do?**

*We encourage you to get the medical care you need.* Most immigrants who are subject to the public charge test are not eligible for non-emergency Medicaid. That is the only medical program USCIS officials will consider in the public charge test. Consular officials should not consider any medical benefit use at this time.
Getting the care you need and staying healthy may actually help you in the public charge test. Get legal advice before deciding not to use medical benefits. See contact information below.

**Does the public charge test apply to Green Card holders when they apply to become naturalized U.S. citizens?**

No. There is no public charge test for Green Card holders when they apply for naturalization or when they renew their Green Cards. However, Green Card holders who receive benefits should try to limit trips outside the U.S. to less than 6 months (in a single trip). Green Card holders who receive benefits and have taken a trip outside the U.S. of over 6 months should get legal advice before applying for U.S. citizenship.

**Where to get legal advice:**

**Contact Northwest Justice Project:**

**Outside King County:** Call the CLEAR Hotline at 1-888-201-1014 weekdays from 9:15 a.m. - 12:15 p.m.

**In King County:** Call 211 for referral to a legal services provider weekdays from 8:00 am – 6:00 pm.

**Persons 60 and Over** can call CLEAR*Sr at 1-888-387-7111 (statewide).

**Deaf, hard of hearing or speech impaired callers** can call CLEAR or 211 (or toll-free 1-877-211-9274) using a relay service of your choice.

Apply online with **CLEAR*Online** - nwjustice.org/get-legal-help.

CLEAR and 211 will provide a free interpreter.

**Contact Northwest Immigrant Rights Project:**

**Seattle Office** - serving Island, King, San Juan, Skagit, Snohomish, and Whatcom counties: 206.587.4009 or 1-800.445.5771

**Tacoma & South Unit (TSU)** – serving Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Kitsap, Lewis, Mason, Pacific, Pierce, Skagit, Skamania, Thurston, and
Wahkiakum counties: 206.816.3893 or TSUintake@nwirp.org

**Granger Office** - serving Adams, Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Klickitat, Yakima, Walla Walla, and Whitman counties: 509.854.2100 or 888.756.3641

**Wenatchee Office** - serving Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens counties: 509.570.0054 or 866.271.2084

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