



Restoring the Public Charge Policy

by Kelly Whitener

Background

The Department of Homeland Security (DHS) issued a final regulation that restores longstanding public charge policy, effective December 23, 2022. This comes after attempts by the Trump Administration to radically expand the scope and nature of the public charge test, making it much harder for some immigrants to adjust their status and discouraging many more immigrants from seeking public benefits. This fact sheet explains the final rule, focusing on how the rule will impact children's health coverage. Empowered by the facts, families should be reassured that they can enroll their children in Medicaid and CHIP without fear of immigration consequences.

Children with health coverage are more likely to become healthy adults and achieve greater academic and economic success.¹ Over the last few decades, Medicaid and CHIP policies have made it easier for children—including lawfully residing immigrant children—to get and stay covered, helping reach historic coverage levels. But, the number of uninsured children increased every year from 2016 to 2019, due in part to a loss of public coverage. The loss of public coverage can be attributed to a range of factors, including large cuts in outreach and enrollment assistance, red tape barriers that make it harder for families to enroll or stay enrolled, and a “chilling effect” created by the Trump Administration's public charge policies and other actions that led to a hostile climate for immigrant families.² Returning to longstanding public charge rules will help reverse those trends, but more needs to be done to make sure accurate information reaches impacted communities.

What is Public Charge?

Public charge is a term used in U.S. immigration law to refer to a person who is likely to become dependent on the government in the future. An immigrant who is deemed likely to become a public charge may be denied admission to the U.S. or unable to adjust their status to become a lawful permanent resident (LPR) or green card holder.³ The existence of a public charge test is rooted in racism and xenophobia and ignores the obvious and proven contributions made by immigrants in the United States, both historically and in the present.

Public charge inadmissibility determinations are based on a totality of the circumstances test. Various factors such as the applicant's age, health, family status, financial status, and education and skills are all taken into consideration when deciding whether the applicant is likely to be primarily dependent on the government. No single factor is dispositive; all factors must be considered together. The totality of circumstances test is prospective, meaning that the decision cannot be based only on what happened in the past.

On September 9, 2022, DHS issued a final rule called [Public Charge Ground of Inadmissibility](#) that will restore longstanding public charge policy effective December 23, 2022. In the meantime, the public charge rules outlined in the [1999 Field Guidance](#) remain in effect. (The Trump administration issued harsh public charge regulations that were blocked by the courts and rescinded by the Biden administration.)



When Does the Public Charge Inadmissibility Test Apply? To Whom?

The public charge inadmissibility test applies to individuals seeking admission or adjustment of status to legal permanent residency. But it is important to remember that not all immigrants are subject to the public charge inadmissibility test. For example, the public charge inadmissibility test does not apply to: refugees, asylees, survivors of domestic

violence, trafficking, or other serious crimes; juveniles who have been abused, neglected, or abandoned by a parent; and other categories of noncitizens (for the full list of exemptions, see 8 CFR §212.23). Additionally, the public charge inadmissibility test does not apply to citizens or green card holders applying for citizenship.

How Does the Public Charge Test Work?

People applying for admission or adjustment of status from within the U.S. who do not qualify for an exemption are subject to DHS's public charge test. (Note that people applying from abroad may be subject to a similar test governed by the Department of State.⁴)

When making a public charge determination, DHS will assess whether the applicant is *likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense* (8 CFR §212.21(a)). Some important considerations from this definition include:

- Only two types of benefits will be considered—cash assistance and long-term institutional care (see Table 1).
- Most immigrants seeking admission or adjustment of status who are subject to the public charge inadmissibility test are not eligible for the benefits that will be considered.⁵
- If the applicant's child or another family member uses these benefits, their use will **NOT** be considered in the applicant's public charge assessment.

- DHS's definition assesses whether the applicant is likely to become *primarily* dependent for subsistence; this means individuals who have income or support that is being *supplemented* by a public benefit should not meet the definition of public charge.

Other benefits, such as nutrition programs, health insurance programs, housing supports, and any benefits related to immunizations or testing of communicable diseases such as COVID-19, will not be considered (see Table 2).

Basic Elements of the Public Charge Test

- Benefit consideration
- Statutory factors
- Affidavit of support





Benefit Consideration in a Public Charge Test

Table 1. Benefits That Will Be Considered in a Public Charge Test (8 CFR §212.21(b) and (c))

Cash Assistance	<ul style="list-style-type: none"> • Supplemental Security Income (SSI) • Cash assistance under the Temporary Assistance for Needy Families (TANF) program • “General Assistance” cash benefits from state, Tribal, territorial, or local government
Long-term Institutional Care	<ul style="list-style-type: none"> • Medicaid institutional services such as in a nursing facility or mental health institution* • Long-term institutional care paid for by state, Tribal, territorial or local governments

* Note: See Medicaid and public charge for more information

Table 2. Example of Benefits That Will NOT Be Considered in a Public Charge Test (8 CFR §212.22(a)(3))

Nutrition Programs	<ul style="list-style-type: none"> • Supplemental Nutrition Assistance Program (SNAP) • Special Supplemental Nutrition Assistance Program for Women, Infants and Children (WIC) • School breakfast and lunch programs
Health Insurance Programs	<ul style="list-style-type: none"> • Medicaid, including Emergency Medicaid* (except long-term institutional care)* • Children’s Health Insurance Program (CHIP) • Immunizations • Medicare • Premium tax credits for Marketplace health insurance
Housing Programs	<ul style="list-style-type: none"> • Section 8 • Public housing
Public Health Programs	<ul style="list-style-type: none"> • COVID vaccines, testing, and treatment • COVID-related supports such as Pandemic Electronic Benefits Transfer (P-EBT) and stimulus payments • Other disaster or pandemic assistance

* Note: See Medicaid and public charge for more information.



More on Medicaid and Public Charge

Medicaid is a complex, joint federal-state program that provides health coverage to over 80 million people. For purposes of understanding how enrolling in Medicaid would impact a public charge inadmissibility determination, it is useful to think of Medicaid as three distinct programs offering: (1) coverage for emergency services only, (2) comprehensive health coverage, and (3) long-term services and supports.

1. Emergency Medicaid includes limited coverage of emergency medical services for noncitizens who would be eligible for comprehensive Medicaid coverage but for their immigration status. Common examples of emergency Medicaid services include acute hospital services and labor and delivery. Immigrants who are subject to the public charge test may also be eligible for emergency Medicaid services, however the rule makes very clear that these using these benefits **will not be** considered in a public charge test.
2. Medicaid offers comprehensive health coverage to people who meet the program's eligibility rules, which vary considerably by state. Generally, comprehensive Medicaid coverage is limited to citizens and certain qualified immigrants such as refugees, asylees, and other humanitarian immigrants. Other immigrants, such as LPRs, are eligible only after a five-year waiting period, though states may waive the five-year waiting period for children and pregnant people.⁶ While it is unlikely that an immigrant who is subject to the public test is eligible for comprehensive health coverage under Medicaid, the rule makes very clear that using these benefits **will not be** considered in a public charge test.

3. Medicaid covers long-term services and supports including home and community-based care and care delivered in an institutional setting such as a nursing home or mental institution. Like comprehensive Medicaid in (2), it is unlikely that an immigrant who is subject to the public charge test is eligible for Medicaid long-term services and supports. However, if eligible, it is important to distinguish whether such services are delivered at home versus in an institutional setting and whether such services are for short periods for rehabilitation versus long-term care. Only services delivered in an institutional setting for long-term care under §1905(a) of the Social Security Act **will be** considered in a public charge test.

In summary, the overwhelming majority of Medicaid services **are not** considered in a public charge test, and very few immigrants subject to the public charge test will be eligible for (and receiving) the long-term institutional services that are considered. Use of Medicaid therefore poses negligible public charge risk for immigrants.





Statutory Factors in a Public Charge Test

In addition to considering past or current use of cash assistance or long-term institutional care, there are five statutory factors that must be considered in a public charge inadmissibility determination: age; health; family status; assets, resources, and financial status; and education and skills. The factors are unchanged, but the final rule provides some additional clarity on the evidence that will be used (see Table 3). Nonetheless, the public charge policy is not prescriptive about how the factors should be used; for example, some factors may support a public charge determination, while others could support finding the individual is not a public charge.

With respect to age, DHS intends to issue guidance that will clarify considerations that are relevant to considering a child’s receipt of public benefits in the totality of the circumstances. Evidence shows that use of benefits by a child does not indicate their likelihood to become primarily dependent on the government in the future. On the contrary, benefit use by children leads to higher educational attainment and better financial security in adulthood.⁷ For example, a recent study by the Federal Reserve Bank of Minneapolis found that children covered by Medicaid grew up to be healthier adults who work more and receive public assistance less.⁸

Table 3. Statutory Factors that Must Be Considered (8 CFR §212.22(a))

Statutory Factors	Evidence
Age	None listed
Health	Report of an immigration medical examination performed by a civil surgeon or panel professional where such examination is required (the final rule clarifies that a disability in itself cannot be the basis for a finding of public charge)
Family Status	Household size, including the applicant; spouse, parents, siblings, and children residing with the applicant; and tax dependents
Assets, resources, and financial status	Household income, assets, and liabilities
Education and skills	Degrees, certifications, licenses and skills obtained through work experience or educational programs



Affidavit of Support in a Public Charge Test

Under §213 of the Immigration and Nationality Act (INA), most family-based immigrants and certain employment-based immigrants are required to submit an affidavit of support—a form signed by a sponsor promising to support the immigrant if the immigrant needs support. If an affidavit of support is required, but one is not submitted or DHS determines that the

affidavit is insufficient (e.g., the sponsor engaged in fraud or material concealment or misrepresentation in executing the affidavit), the applicant can be found inadmissible without any consideration of the statutory factors. However, if a sufficient affidavit of support is submitted, DHS will consider it favorably under the totality of the circumstances test.



Totally of the Circumstances in a Public Charge Test

DHS considers the statutory factors, the affidavit of support (when required), and current and/or past use of cash assistance or long-term institutional care in the totality of the circumstances. This means that all of the components must be considered together and no single component can dictate the outcome of the public charge determination (except if a required affidavit of support is missing or insufficient as noted above). DHS plans to issue subregulatory guidance to inform the totality of the circumstances test prior to the December 23, 2022 implementation date.

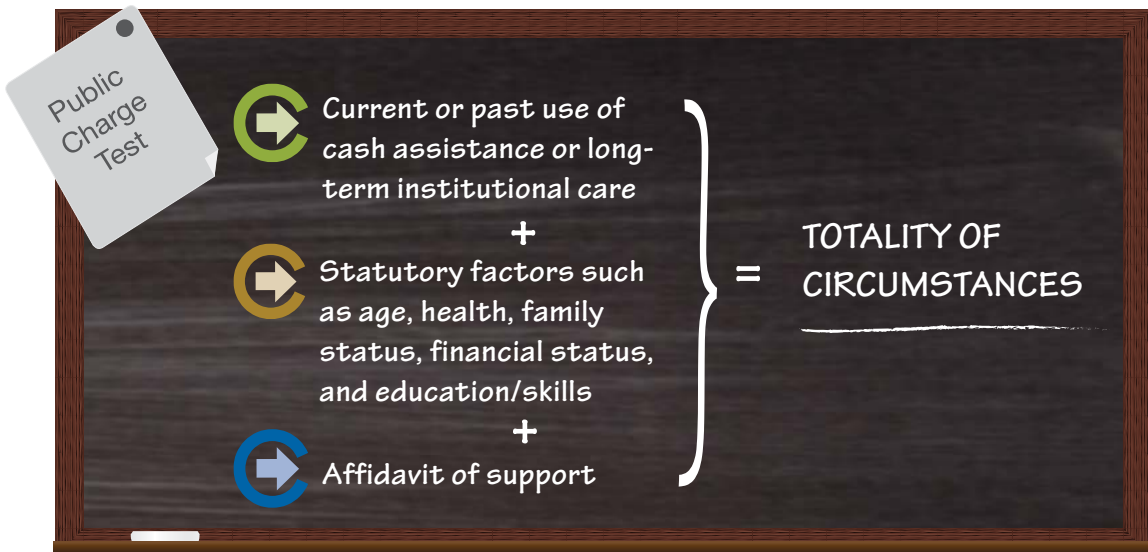
The final rule requires DHS to provide written denial decisions that reflect consideration of each of the required factors and specifically articulate the reasons for the immigration officer’s determination. This policy is similar to longstanding requirements under the 1999 Field Guidance and is crucial to the equitable implementation of the public charge standard, because evidence shows that accuracy increases when evaluators are accountable.⁹ This policy will make officers less likely to make erroneous decisions rooted in implicit bias and will create written records that allow DHS to investigate patterns of bias, helping counteract the legacy of discrimination in the U.S. immigration system.



Sarah’s Public Charge Story

“Sarah” lives in a mixed status household—she is a lawfully residing immigrant and her two children are U.S. citizens. Sarah would like to apply for a green card to give her the peace of mind that her family can stay together in the U.S. indefinitely. She does not qualify for an exemption, so she must pass the public charge inadmissibility test first. Sarah received cash assistance several years ago, and she is worried that this may disqualify her. But she is in good health and she has a steady job as a preschool teacher. The immigration officer looks over all of the facts and determines that Sarah is not likely to become a public charge because while she received cash assistance in the past, it was several years ago, comprised a small portion of her income, and did not last for an extended period of time. Her other circumstances, such as her health, education, and income, indicate that Sarah is unlikely to become primarily dependent on the government for subsistence. Therefore, Sarah passes the public charge test and is able to proceed with her green card application.

Note: This example is based on the hypothetical at 87 Fed. Reg. 55542 (September 9, 2022).





Implications of the Changes to the Public Charge Grounds for Inadmissibility

Immigration

The Public Charge Ground of Inadmissibility final rule implements longstanding immigration policy with respect to whether a noncitizen applying for a visa, admission, or adjustment of status is likely at any time to become a public charge. Unlike the 2019 rule issued under the Trump Administration, this rule largely adheres to immigration policy and practice dating back decades. Therefore, applicants can expect similar outcomes to those adjudicated under the 1999 Field Guidance, but with some improvements. For example, the final rule lists immigrants *who are NOT subject* to a public charge test and benefits that *will NOT be considered*. The rule also clarifies that benefits received by a family or household member *will NOT be considered*. For example, cash assistance received by a U.S. citizen child would NOT be considered in the parent's green card application. Nor will DHS consider simply applying for benefits or helping someone else apply. These clarifications should make it easier for applicants to understand how the public charge test will apply in their unique circumstances. Overall, fewer immigrants will see their immigration processes harmed by public charge findings, relative to what would have occurred under the draconian Trump Administration policy.

Health

Following a leaked draft of proposed changes to public charge and other related rumors in early 2018 during the Trump Administration,¹⁰ families started to avoid public benefits out of fear of immigration-related consequences.¹¹ This “chilling effect” was both deliberate and damaging. Constantly changing the rules and increasing their complexity made it harder for families to make informed decisions about enrolling in benefit programs. From 2016 to 2019, the child uninsured rate increased a full percentage point, translating to approximately 726,000 more uninsured children and eliminating progress made following implementation of the Affordable Care Act.¹² Research shows that use of SNAP, TANF, and Medicaid/CHIP declined at twice the rate for noncitizens compared to citizens and declines were nearly as sharp for citizen children with noncitizens in the household (mixed status families) as they were for noncitizens.¹³ Losing access to public benefits denies children the opportunity to reach their full potential and can have long-term consequences for society as a whole.¹⁴

Returning to longstanding public charge policy will help undo these harms. However, it is important that trusted community partners have all of the information and resources needed to empower families to make informed decisions about using public benefits.



If you or a family member are worried about how these changes will impact you, go to <https://protectingimmigrantfamilies.org/> and review [Resources for Families](#). To learn more about how using benefits may impact your immigration proceedings, try the free online tool [Keep Your Benefits](#). You may also benefit from speaking to an immigration law expert. To find a free or low-cost option near you, go to <https://www.immigrationadvocates.org/nonprofit/legaldirectory/>.



Endnotes

¹ Edwin Park, et al., “Jeopardizing a Sound Investment: Why Short-Term Cuts to Medicaid Coverage During Pregnancy and Childhood Could Result in Long-Term Harm” (New York, N.Y.: Commonwealth Fund, December 2020), available at <https://www.commonwealthfund.org/publications/issue-briefs/2020/dec/short-term-cuts-medicaid-long-term-harm>.

² Joan Alker and Alexandra Corcoran, “Children’s Uninsured Rate Rises by Largest Annual Jump in More Than a Decade” (Washington, D.C.: Georgetown University Center for Children and Families, October 2020), available at <https://ccf.georgetown.edu/2020/10/08/childrens-uninsured-rate-rises-by-largest-annual-jump-in-more-than-a-decade-2/#heading-4>.

³ U.S. Citizenship and Immigration Services, “Public Charge Resources” (Washington, D.C.: Department of Homeland Security, September 2022), available at <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/public-charge-resources>.

⁴ Charles Wheeler, “State Department Restores Pre-2018 Public Charge Guidance” (Silver Spring, M.D.: Catholic Legal Immigration Network, Inc., April 2021), available at <https://cliniclegal.org/resources/ground-inadmissibility-and-deportability/public-charge/state-department-restores-pre-2018>.

⁵ For examples of categories noncitizens who are eligible and whose past or current benefit use may be considered in a public charge inadmissibility determination, see Public Charge Ground of Inadmissibility, 87 Fed. Reg. 55490 (September 9, 2022).

⁶ Medicaid and CHIP Payment and Access Commission, “Non-citizens” (Washington, D.C.: MACPAC, 2017), available at <https://www.macpac.gov/subtopic/noncitizens/>.

⁷ E. Park, Op. Cit. 1.

⁸ Andrew Goodman-Bacon, “The Long-Run Effects of Childhood Insurance Coverage: Medicaid Implementation, Adult Health, and Labor Market Outcomes” (Minneapolis, M.N.: Opportunity and Inclusive Growth Institute, Federal Reserve Bank of Minneapolis, October 2020), available at http://goodman-bacon.com/pdfs/medicaid_longrun_ajgb.pdf.

⁹ Neal P. Mero, et al., “Effects of Rater Accountability on the Accuracy and the Favorability of Performance Ratings,” *Journal of Applied Psychology* 80(4): 517-524 (1995), available at <https://info.catme.org/wp-content/uploads/Mero-accountability.pdf>.

¹⁰ Yeganeh Torbati, “Exclusive: Trump administration may target immigrants who use food aid, other benefits” (Washington, D.C.: Reuters, February 2018), available at <https://www.reuters.com/article/us-usa-immigration-services-exclusive/exclusive-trump-administration-may-target-immigrants-who-use-food-aid-other-benefits-idUSKBN1FS2ZK>; Dara Lind, “Exclusive: Trump’s draft plan to punish legal immigrants for sending US-born kids to Head Start” (Washington, D.C.: Vox Media, February 2018), available at <https://www.vox.com/2018/2/8/16993172/trump-regulation-immigrants-benefits-public-charge>; and Nick Miroff, “Trump proposal would penalize immigrants who use tax credits and other benefits” (Washington, D.C.: Washington Post, March 2018), available at https://www.washingtonpost.com/world/national-security/trump-proposal-would-penalize-immigrants-who-use-tax-credits-and-other-benefits/2018/03/28/4c6392e0-2924-11e8-bc72-077aa4dab9ef_story.html.

¹¹ Hamutal Bernstein, et al., “Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019” (Washington, D.C.: Urban Institute, May 2020), available at <https://www.urban.org/research/publication/amid-confusion-over-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-2019>; Jennifer M. Haley, et al., “One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019” (Washington, D.C.: Urban Institute, June 2020), available at <https://www.urban.org/research/publication/one-five-adults-immigrant-families-children-reported-chilling-effects-public-benefit-receipt-2019>; and H. Bernstein, et al., “Immigrant Families Continued Avoiding Safety Net During the COVID-19 Crisis” (Washington, D.C.: Urban Institute, February 2021), available at <https://www.urban.org/research/publication/immigrant-families-continued-avoiding-safety-net-during-covid-19-crisis>.

¹² J. Alker, Op. Cit. 2.

¹³ Randy Capps, et al., “Anticipated “Chilling Effects” of the Public-Charge Rule are Real: Census Data Reflect Steep Decline in Benefits Use by Immigrant Families” (Washington, D.C.: Migration Policy Institute, December 2020), available at <https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-are-real>.

¹⁴ E. Park, Op. Cit. 1.

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