



**LEGAL AID
SOCIETY**
OF PALM BEACH COUNTY

Immigration & Nationality Law 2020 Public Charge Update

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COVID-19 Testing and Treatment

- “USCIS encourages all those, including [noncitizens], with symptoms that resemble Coronavirus 2019 (COVID-19) (fever, cough, shortness of breath) to seek necessary medical treatment or preventative services. Such treatment or preventative services will not negatively affect any [noncitizen] as part of a future Public Charge analysis.”
- “In addition, the rule does not restrict access to vaccines for children or adults to prevent vaccine-preventable diseases.”
- <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>

The Public Charge Rule

- The public charge concept has been part of the immigration law for over 100 years
- A foreign national's application for status may be denied if the government determines that he/she is likely to become dependent upon the government for subsistence

Who Needs to Satisfy the Public Charge Rule?

- Foreign nationals applying for a **temporary visa** (visitor, student, etc.)
- Foreign nationals admitted on a temporary visa who wish to **extend their stay or to change to a different temporary status after admission** (i.e., extending visitor status or changing from visitor to student status)

Who Needs to Satisfy the Public Charge Rule?

- Foreign nationals applying for lawful permanent residence (a green card) through:
 - **a family/relative petition**
 - an employer petition or
 - the diversity visa program (lottery)

Who **Does Not** Need to Satisfy the Public Charge Rule?

- People seeking lawful permanent residence (green card) through other laws, including:
 - VAWA (victims of domestic abuse)
 - U visa/status (victims of violent crime)
 - T visa/status (victims of human trafficking)
 - Special Immigrant Juvenile petitions (abandoned/abused children)
 - Asylum/asylee status
 - Refugee status
 - The Cuban Adjustment Act
 - Other nationality based programs (HRIFA, NACARA)

Who **Does Not** Need to Worry About the Public Charge Rule?

- People already granted lawful permanent resident status (green card holders) unless they travel outside of the U.S. for more than 180 days
- **TPS/DACA holders** (though the public charge rule may apply should they later seek LPR status)

New Public Charge Analysis

- On August 14, 2019, the Trump Administration published regulations dramatically intensifying the analysis through which public charge determinations are made for those applying for status
- The regulations were finalized and impact applications submitted to USCIS on/after February 24, 2020

The Public Charge Analysis

1999 – February 24, 2020

- The government considered two factors to determine whether an applicant satisfies the public charge test:
 1. Is the *applicant* presently enrolled in certain **government funded public benefits programs** or does he/she have a history of reliance on such programs?
 2. Did the *sponsor* file a sufficient **affidavit of support**?

Noncitizen Use of Public Benefits Programs

- **The government's policy from 1999 to Feb. 24, 2020**
 - **Use of Cash/Income Maintenance benefits by the noncitizen could lead to denial:** Certain green card applicants **would be** penalized for receiving SSI or TANF/welfare payments or government subsidized long-term care (nursing homes, mental health institutions, etc.)
 - **Use of Food/Nutrition/Medical/Health benefits by noncitizen will not lead to denial:** Green card applicants **would not be** denied for using food/nutrition programs (such as SNAP and WIC) or health-related programs (such as the Affordable Care Act, ADAP, Health Care District, Medicaid (unless the Medicaid is used to support long-term care)

The New Rule Expands the Definition of “Public Benefit”

- **The new rule added more public assistance programs which will be considered “negative factors” if used by the applicant:**
 - Supplemental Security Income (SSI)
 - Federal, state and local “cash assistance/welfare” programs such as TANF
 - **SNAP (food stamps)**
 - **Non-emergency Medicaid** (but there are exceptions)
 - **Section 8 project-based rental assistance and Housing Choice Voucher Program**
 - **Section 9 Public Housing**

Exceptions to the Rule

Noncitizens will not be penalized for the following:

- Medicaid for women during pregnancy and up to 60 days after birth
- Medicaid/CHIP for children under age 21
- Medicaid provided in connection with the Individuals with Disabilities Education Act
- Medicaid provided as school-based services or benefits provided to individuals who are at or below the oldest age eligible for secondary education as determined under State or local law
- Medicaid and other benefits received by members of the U.S. Armed Forces/Ready Reserve and their spouses and children
- Emergency Medicaid
- Any public benefits received by children who will automatically acquire US citizenship through parents (children residing with US citizen parent(s) who acquire lawful permanent residence prior to age 18)

Assistance Programs not penalized under the new rule

- Earned benefits such as Social Security Disability/Retirement benefits (based upon work history), government pensions, veterans benefits, unemployment compensation
- Medicare
- Palm Beach County Health Care District / Public Health Services
- Affordable Care Act coverage
- Short term/non-cash disaster relief (e.g. ,“hurricane food stamps”)
- Immunizations and testing/treatment for communicable disease
- WIC
- School based nutrition services (breakfast/lunch) programs
- And hundreds of other non-cash, state and local assistance programs which exist throughout the U.S.!!

COVID-19 Testing and Treatment

- The public charge rule does not penalize foreign nationals for accessing government funded testing, screening or treatment of communicable diseases
- On March 14, 2020, USCIS issued a public advisory affirming that “USCIS will neither consider testing, treatment nor preventative care (including vaccines, if a vaccine becomes available) related to COVID-19 as part of a public charge inadmissibility determination ... even if such treatment is provided or paid for by one or more public benefits as defined in the rule (e.g. federally funded Medicaid)”
- **Therefore, no one will be penalized for accessing government funded COVID-related testing, screening, treatment or vaccines (when available)**

What about public benefits received by family members?

- An applicant will not be penalized for the lawful receipt of public benefits by their children and other family/household members
- BUT.... a new proposed rule might penalize affidavit of support sponsors in the future for receipt of benefits if the rule is finalized

The New Public Charge Analysis

- The government will consider many factors to determine whether an applicant will be denied as a public charge (Totality of the Circumstances):
 - The sponsor's **affidavit of support**
 - The applicant's **present and past use of** certain government funded **public benefits** programs
 - The applicant's **age**
 - The applicant's **health**
 - The applicant's **family status**
 - The applicant's **income, assets, liabilities, financial status**
 - The applicant's **education, employment history and skills**

It's the Totality of the Circumstances

- The expanded definition of “public benefit” will not impact most applicants because they would not be eligible to receive those benefits anyway
- The greatest challenge presented by the new rule is not the expansion of the list of benefits but the new focus on the public charge factors and totality of the circumstances analysis (age, health, family status, financial resources, education, etc.)
- An applicant can be denied on public charge grounds even if they have never received any of the public assistance programs specified in the rule

Resources

- M. Shane O'Meara, Esq.
- The Legal Aid Society of Palm Beach County
- E-Mail: someara@legalaidpbc.org / Telephone: 561-822-9757

- **Immigrant Legal Resource Center**
- www.ilrc.org
- **US Citizenship and Immigration Services/USCIS**
- www.uscis.gov
- **Catholic Legal Immigration Network**
- www.cliniclegal.org
- **American Immigration Lawyers Association**
- www.aila.org