

Public Charge

Maripat Pileggi

Mpileggi@clsphila.org

215-227-4738

February 12, 2020

AGENDA

- What is public charge and who is subject to it?
- What are the rules about who is a public charge and how are they changing?
- The large majority of people can safely receive the public benefits they are eligible to receive without harming their immigration status!
- The fight continues and you can help!
- Questions and Case Examples

What is public charge?

Public charge has been a part of federal law since 1882.

- Public charge grounds of inadmissibility. Immigration officials can deny **visas or green cards to some immigrants** if the immigration official finds that the immigrant is likely to become a public charge.

Public Charge Grounds of Inadmissibility Is Only a Factor in Green Card Application, Visa Application, and Visa Renewal Processes . .

Public Charge cannot be used to deny the following:

- US Citizenship applications
- Green Card renewal applications
- Asylum applications
- DACA renewals
- TPS applications or renewals
- VAWA petitions
- U and T Visa applications
- Special Immigrant Juvenile (SIJ) status
- And more

. . . and, it's only a factor in some people's green card and visa applications process. Many people are exempt from the public charge grounds of inadmissibility.

The following people cannot be denied green cards on public charge grounds:

- Refugees
- Asylees
- VAWA petitioners
- SIJ
- U-Visa holders
- T-Visa holders
- And more

If public charge does not apply to you, you can receive any public benefits you qualify for without any risk to your immigration status.



U.S. Citizens. If you are a U.S. Citizen, public charge does not apply to you.



Green card holders. If you already have your green card, public charge does not apply when you are renewing your green card or when you apply for U.S. citizenship. However, if you plan to leave the U.S. for more than 6 months, public charge could apply when you return to the U.S., so you should talk with an immigration attorney before you leave.



Humanitarian immigrants and crime victims. If you have a U or T Visa, Asylum or Refugee status, Special Immigrant Juvenile status, or you are a VAWA self-petitioner, public charge does not apply to you. Public charge is also not part of the application process for any of these statuses.

Public charge applies to a limited group of immigrants during a very specific time in their immigration cases.



- People applying for green cards or visas on family petitions are the main group of people who are subject to public charge. A public charge determination can result in the denial of the green card or visa application.

Who makes decisions about public charge inadmissibility? It depends on where your green card/visa application will be processed.

- The Department of Homeland Security (DHS), through USCIS, makes public charge decisions for people applying for visa renewals and green cards in the U.S.
- The Department of State makes public charge decisions for people applying for visas or green cards from overseas.

Current DHS Public Charge Policies

- 1999 Field Guidance.
- A public charge is someone who depends almost exclusively on the government for basic subsistence.
- An immigrant's current and past receipt of cash assistance (TANF, GA and SSI) or Long-Term Care Medical Assistance for nursing home admissions can be considered when making public charge determinations in the U.S. No other benefits can be considered.
- Family members receipt of benefits is not counted. However, if someone in the family receives cash assistance (TANF or SSI) and this is the family's only income, this can be considered.

DHS Public Charge Policies Will Change on Feb 24

- DHS will begin using its new public charge rules on February 24 (this will continue at least until litigation is complete).
- Definition of public charge will expand to mean anyone who is more likely than not to use any of the following public benefits over 12 or more months in any 36 month period:
 - Cash Assistance (TANF, GA, SSI)
 - Federal Medical Assistance (except Emergency MA and MA for children under 21 and pregnant adults)
 - Note that along with Emergency MA and MA for children under 21 and pregnant adults, state-funded Medical Assistance is also NOT included. People who are eligible for any of these exempted MA programs can receive them without any public charge risk.
 - SNAP/Food Stamps,
 - Housing subsidies and public housing.

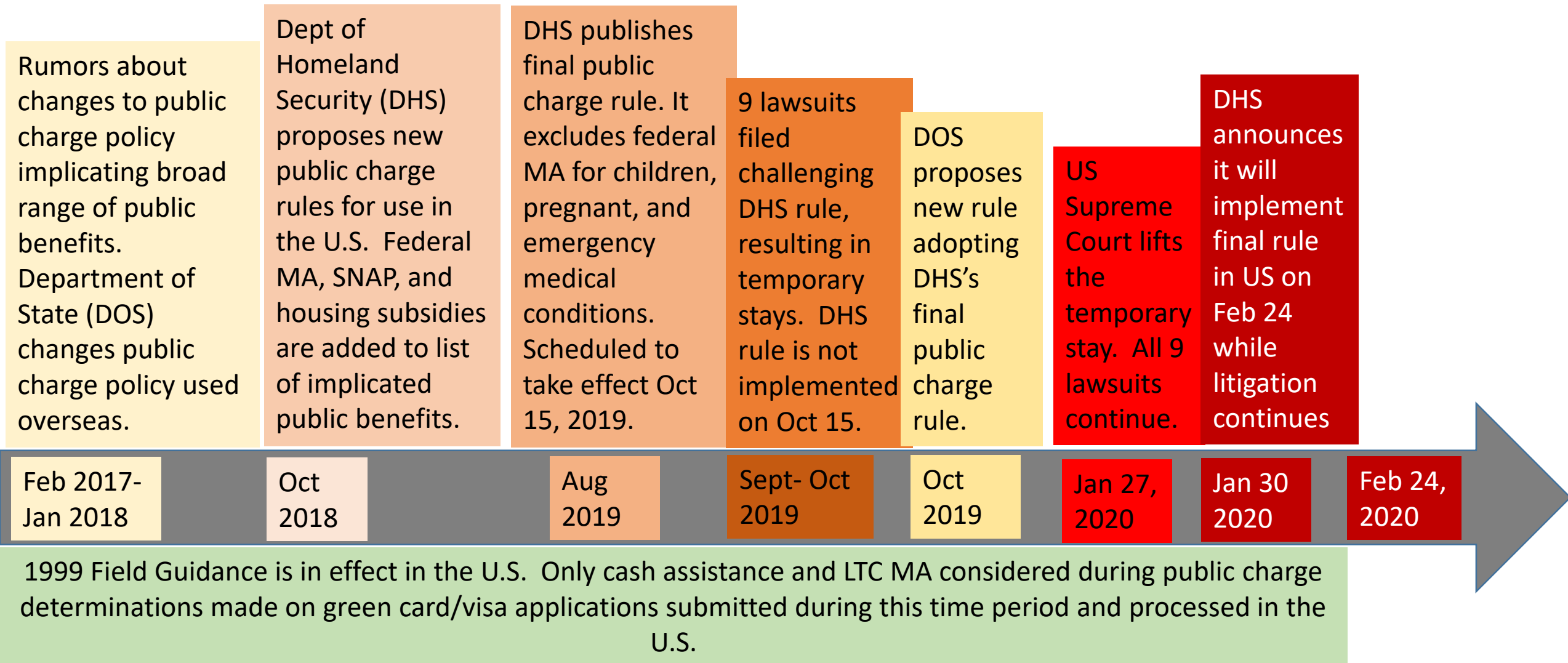
DHS Public Charge Policies Will Change on Feb 24

- Past receipt of any named public benefit (from previous slide) for 12 months or more over any 36 month period will be negatively weighed.
- Family members' receipt of benefits is not counted at all.
- Will not be retroactively applied. Green card/visa applications submitted before Feb 24 will be adjudicated under 1999 Field Guidance rules. No benefits received before Feb 24, besides cash assistance and LTC MA, will be considered no matter when the green card/visa application is filed.

DHS Public Charge Policies Will Change on Feb 24

- Totality of circumstances is still the rule (it always has been). Past receipt of benefits alone cannot make someone a public charge.
- Some other factors that will come into play under the new rule:
 - Family income under 125% FPL will be negatively weighed. Income over 250% FPL will be positively weighed.
 - Being under 18 or over 61 will be negatively weighed.
 - Having a health concern that will require extensive treatment or affect ability to work will be negatively weighed.
 - Having no health insurance will be negatively weighed. Having unsubsidized health insurance will be positively weighed.
 - English proficiency, education, and employment history will all be considered.
 - Affidavit of support will also be considered, but is not given nearly as much weight as it has been before.

Timeline of Public Charge Policy Changes



If you are subject to public charge...

- If applying for a green card or visa from inside the U.S., there are many public benefits you and your family can still receive without any risk to your immigration status (see following slides).
- If applying for a green card or visa from outside the U.S., talk with an immigration lawyer. The Department of State makes these public charge determinations and uses a different set of public charge rules than those used by the Department of Homeland Security here in the U.S.

Among the limited group of immigrants who are subject to a public charge inside the U.S., there are very few whose benefit receipt creates any public charge risk.

There are three main reasons for this:

1. There is a small list of public benefits that create public charge risk. And most people who are subject to public charge are ineligible for all of them.
2. There are many more benefit programs that create no public charge risk. Many of these public benefits are available to people subject to public charge.
3. Family members' receipt of benefits is not counted under the new public charge rules at all.

1- There is a small list of public benefits that create public charge risk. And most people who are subject to public charge are ineligible for all of them.

- Current public charge rules only permit immigration officials to consider past receipt of cash assistance and long-term care MA for nursing home admissions.
- Starting February 24, 2020, this list will grow to include SNAP, federal housing subsidies, and federal MA (but excluding emergency MA, MA for children under 21, and MA for pregnant adults).

1- There is a small list of public benefits that create public charge risk. And most people who are subject to public charge are ineligible for all of them.

- Most people subject to public charge have an immigration status that makes them ineligible for these benefits.
 - For example, you need a green card or a humanitarian immigration status to meet immigration status eligibility criteria for SNAP.
 - People applying for green cards on family petitions (the main group of people subject to public charge) do not yet have their green cards and almost none have a humanitarian status, so they are therefore ineligible for SNAP.

2- There are many programs that create no public charge risk at all.

All of the programs listed below are available to people who are subject to public charge. None of the programs listed below can be considered during a public charge test in the U.S.:

- Medical Assistance for:
 - Children under 21
 - Pregnant adults
 - Emergency medical conditions
 - Some very low income adults (GA MA)
- CHIP
- Marketplace subsidies
- Community Health Clinics
- Charity Care
- Prescription assistance programs
- Unemployment Compensation
- Workers Compensation
- WIC
- School lunch
- Food Cupboards/Pantries
- Utility assistance programs
- Shelters
- Domestic violence services
- And more

3- Family members' receipt of benefits is not counted under the new public charge rules at all.

- Under current public charge rules, when an individual who is subject to a public charge test applies for a green card or visa, that individual's family members' receipt of benefits cannot be considered during the public charge test.
- There is just one exception to this: if a family member receives cash assistance and this is used as the family's sole source of income, this can be considered during the public charge test.

Main Takeaways

- Lots of people are exempt from public charge. People who are exempt can receive any public benefits at any time without any harm to their immigration status!
- People who are subject to public charge and who will be applying for green cards or visas from outside the U.S., and people who have questions about how their receipt of public benefits might affect their ability to sponsor family members who are immigrating from overseas, should talk with an immigration attorney.

Main Takeaways (2)

- People who are subject to public charge and who will be applying for green cards or visas from inside the U.S. can continue to receive almost all of the benefits they are eligible to receive! Talk with an immigration attorney about how to pass the public charge test and how to file green card/visa applications before February 24 if at all possible.
- For people subject to public charge tests in the U.S.: your family members' receipt of benefits cannot harm your immigration status (with the small exception of cash assistance used as the family's sole source of income before Feb 24)!

The fight continues!

- Immigrant communities and advocates continue to work to put an end to the terrible new public charge rule.
- There has been no decision from the Supreme Court about the legality of the rule itself. The 9 lawsuits challenging the rule will continue and will hopefully end with the new public charge rule being invalidated for good.

You can help!

- Talk with your communities, offer good information and resources on public charge, and share stories of harm for ongoing advocacy.
- PICC has a [public charge webpage](#). The [Protecting Immigrant Families campaign](#) has many great resources and a [public charge harm reporting form](#) for people to use to report stories of harm.

Case Examples

Sarah

Sarah came to the U.S. on a temporary visa in January 2014. She applied for asylum and after 4 long years, her asylum application was approved in 2018. Now she would like to apply for a green card. She has been receiving SSI, SNAP, and MA since June 2019.

Sarah

- Is Sarah subject to a future public charge test?

NO! Asylees are exempt from the public charge grounds of inadmissibility, so there will be no public charge test for Sarah when she applies for her green card.

- Might Sarah think that she should stop receiving benefits?

Yes! Confusion and fear might lead her to believe that her use of benefits will cause her to be denied a green card and US Citizenship.

- What should she do?

Keep her benefits on! (And get that green card ASAP– her SSI eligibility will end in 2025 unless she is a US citizen by then!!)

Susanna

Susanna came to the U.S. as a child on a temporary visa. In 2014, she became a DACA recipient. In 2016, she met and married a U.S. citizen and they now have 2 U.S. citizen children. In 2017, her husband filed a petition and an affidavit of support for her immigrant visa and green card. She received her green card in 2017 and now wants to start the application process to become a U.S. citizen.

She and her husband work and earn about \$3000/mo, putting them at about 140% FPL. Her husband and children receive SNAP. Her children receive MA. Her children receive WIC and they use child care subsidies. She and her husband receive Marketplace subsidies.

Susanna

- Is Susanna subject to a future public charge test?

NO! There is no public charge test during US citizenship application processes.

- Might Susanna think that she and her family should stop using public benefits?

Yes! Confusion and fear might lead her to believe that her family's use of benefits will cause her to be denied US Citizenship.

- What should she do?

Keep her and her family's benefits on!

Sylvia and Samuel

Sylvia came to the U.S. as a child on a temporary visa. In 2014, she became a DACA recipient. In 2016, she met and married Samuel, who is also a DACA recipient who entered the U.S. with a visa. They now have 2 U.S. citizen children.

Sylvia and Samuel work and earn about \$3000/mo, putting them at about 140% FPL. The children receive SNAP, MA and WIC and they use child care subsidies.

Sylvia and Samuel

- Are Sylvia and Samuel subject to a future public charge test?

There is no public charge test during a DACA renewal, so they cannot be denied a DACA renewal on public charge grounds. If they become eligible for a green card on a family petition in the future, they may be subject to a public charge test in the U.S. at that time.

- What should they do?
 - Talk with an immigration attorney about their green card options.
 - Keep benefits on. Even if they become eligible for a visa or green card in the future and will be subject to a public charge test in the U.S. as part of that visa/green card application, there are no benefits they or their children can get that will increase their public charge risks.
 - Remember: new public charge rule does NOT consider family members' receipt of benefits. **No reason for kids not to get benefits.**
 - Remember: **new rule does NOT consider any benefits that are available to people with DACA.** For example, the new rule does not consider Emergency MA, WIC, charity care, or services like medical care at a FQHC or food at pantries/cupboards. **There's no reason for Sylvia or Samuel not to receive benefits or services available to DACA recipients if they become eligible for them.**

Sandra

Sandra has been living in the U.S. with TPS since 2010. In 2016, she met and married a U.S. citizen and they now have 2 U.S. citizen children. In August 2019, after hearing news that the TPS designation for her country might be cancelled, she and her husband started looking into the process of filing a family petition and an affidavit of support for Sandra's immigrant visa and green card. They are now ready to submit Sandra's green card application.

She and her husband work and earn about \$3000/mo, putting them at about 140% FPL. Her husband and children receive SNAP. Her children receive MA. Her children receive WIC and they use child care subsidies. She and her husband receive Marketplace subsidies. She received TANF when she was pregnant with her first child.

Sandra

- Is Sandra subject to a future public charge test?

Yes. She will be subject to DHS's public charge test during her visa and LPR application processes in the U.S.

- What should she do?
 - Talk with an immigration attorney about filing the green card application before Feb 24, 2020.
 - If the green card application is not filed by Feb 24:
 - Remember: new public charge rule does NOT consider family members' receipt of benefits. **No reason for husband and kids not to get benefits.**
 - Remember: new public charge rule does NOT consider receipt of Marketplace subsidies, WIC, or child care subsidies. **No reason for anyone, including Sandra, to drop Marketplace subsidies, WIC or child care subsidies.**
 - Remember: **new public charge rule does NOT permit retroactive application.** Her receipt of MA before Feb 24 will not be considered (it also would not be considered because it was MA for a pregnant woman).
 - Remember: **totality of the circumstances is still the rule.** Her past receipt of TANF does not automatically make her a public charge and she has significant factors that will be weighed positively during the public charge test.

Sandra continued

Sandra and her husband are now just about ready to submit Sandra's green card application. But, things have suddenly changed. Her husband was injured at work and is now unable to work and Sandra is pregnant. Sandra is having a difficult pregnancy and her doctor has advised her to reduce her hours at work. Her husband is trying to get Workers Compensation, but his employer is fighting it. Their income is now closer \$1000/month, putting them at about 45% FPL.

Her husband and children's SNAP benefits have gone up. She and her husband now also receive MA along with their children. She now receives WIC along with her children and they use child care subsidies. Sandra is afraid she will not be able to work much longer and is thinking about applying for TANF.

Sandra continued

- Is Sandra subject to a future public charge test?

Yes. She will be subject to DHS's public charge test during her visa and LPR application processes in the U.S.

- What should she do?
 - Talk with an immigration attorney about filing the green card application before Feb 24, 2020.
 - If the green card application is not filed by Feb 24:
 - Remember: new public charge rule does NOT consider family members' receipt of benefits. **No reason for husband and kids not to get benefits.**
 - Remember: new public charge rule does NOT consider receipt of WIC or child care subsidies. **No reason for anyone, including Sandra, to drop WIC or child care subsidies.**
 - Remember: new public charge rule does NOT consider MA for pregnant women. Her receipt of MA will not be considered. **No reason for Sandra to drop her MA!**
 - Remember: **totality of the circumstances is still the rule, and if she starts receiving TANF it will be heavily weighed against her during the public charge test.** She should think carefully about the decision to apply for or forgo TANF and discuss all her options with her immigration attorney.