Public Charge

Alert: USCIS encourages all those, including aliens, with symptoms that resemble Coronavirus Disease 2019 (COVID-19) (fever, cough, shortness of breath) to seek necessary medical treatment or preventive services. Such treatment or preventive services will not negatively affect any alien as part of a future Public Charge analysis.

The Inadmissibility on Public Charge Grounds final rule is critical to defending and protecting Americans' health and its health care resources. The Public Charge rule does not restrict access to testing, screening, or treatment of communicable diseases, including COVID-19. In addition, the rule does not restrict access to vaccines for children or adults to prevent vaccine-preventable diseases. Importantly, for purposes of a public charge inadmissibility determination, USCIS considers the receipt of public benefits as only one consideration among a number of factors and considerations in the totality of the alien's circumstances over a period of time with no single factor being outcome determinative. To address the possibility that some aliens impacted by COVID-19 may be hesitant to seek necessary medical treatment or preventive services, 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, nor as related to the public benefit condition applicable to certain nonimmigrants seeking an extension of stay or change of status, 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).

The rule requires USCIS to consider the receipt of certain cash and non-cash public benefits, including those that may be used to obtain testing or treatment for COVID-19 in a public charge inadmissibility determination, and for purposes of a public benefit condition applicable to certain nonimmigrants seeking an extension of stay or change of status. The list of public benefits considered for this purpose includes most forms of federally funded Medicaid (for those over 21), but does not include CHIP, or State, local, or tribal public health care services/assistance that are not funded by federal Medicaid. In addition, if an alien subject to the public charge ground of inadmissibility lives and works in a jurisdiction where disease prevention methods such as social distancing or quarantine are in place, or where the alien's employer, school, or university voluntarily shuts down operations to prevent the spread of COVID-19, the alien may submit a statement with his or her application for adjustment of status to explain how such methods or policies have affected the alien as relevant to the factors USCIS must consider in a public charge inadmissibility determination. For example, if the alien is prevented from working or attending school, and must rely on public benefits for the duration of the COVID-19 outbreak and recovery phase, the alien can provide an explanation and relevant supporting documentation. To the extent relevant and credible, USCIS will take all such evidence into consideration in the totality of the alien's circumstances.

Inadmissibility on Public Charge Grounds Final Rule

On Feb. 24, 2020, USCIS implemented the Inadmissibility on Public Charge Grounds final rule nationwide, including in Illinois. USCIS will apply the final rule to all applications and petitions postmarked (or, if applicable, submitted electronically) on or after that date. For applications and petitions sent by commercial courier (for example, UPS, FedEx, or DHL), the postmark date is the date

reflected on the courier receipt. USCIS will reject any affected application or petition that does not adhere to the final rule, including those submitted by or on behalf of aliens living in Illinois, if postmarked on or after Feb. 24, 2020.

Background

Self-sufficiency has long been a basic principle of U.S. immigration law since our nation's earliest immigration statutes. Since the 1800s, Congress has put into statute that aliens are inadmissible to the United States if they are unable to care for themselves without becoming public charges. Since 1996, federal laws have stated that aliens generally must be self-sufficient. On Aug. 14, 2019, DHS published a final rule regarding how DHS determines if someone applying for admission or adjustment of status is likely at any time to become a public charge.

This final rule also requires aliens seeking to extend their nonimmigrant stay or change their nonimmigrant status to show that, since obtaining the nonimmigrant status they seek to extend to change, they have not received public benefits (as defined in the rule) over the designated threshold.

The Statutory Basis of the Inadmissibility on Public Charge Grounds Final Rule

The primary immigration law today is the Immigration and Nationality Act of 1952 (the INA, or the Act), as amended.

Section 212(a)(4) of the INA (8 U.S.C. § 1182(a)(4)): "Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible[…] In determining whether an alien is excludable under this paragraph, the consular officer or the Attorney General shall at a minimum consider the alien's-(I) age; (II) health; (III) family status; (IV) assets, resources, and financial status; and (V) education and skills . . . ."

Section 213 of the INA (8 U.S.C. § 1183): "An alien inadmissible under [section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4)] may, if otherwise admissible, be admitted in the discretion of the Attorney General (subject to the affidavit of support requirement and attribution of sponsor's income and resources under section 1183a of this title) upon the giving of a suitable and proper bond . . . ."

Section 214(a)(1) of the INA (8 U.S.C. § 1184(a)(1)): "The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States."

Section 248(a) of the INA (8 U.S.C. § 1258(a)): "The Secretary of Homeland Security may, under such conditions as he may prescribe, authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status and who is not inadmissible under section 1182(a)(9)(B)(i) of this title (or whose inadmissibility under such section is waived under section 1182(a)(9)(B)(v) of this title) . . . ."

8 U.S.C. § 1601 (PDF)(1): "Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes."

8 U.S.C. § 1601 (PDF)(2)(A): "It continues to be the immigration policy of the United States that – aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations."

8 U.S.C. § 1601 (PDF) (2)(B): It is also the immigration policy of the United States that "the availability of public benefits not constitute an incentive for immigration to the United States."

The DHS Inadmissibility on Public Charge Grounds Final Rule

Timeline of the Rule's Implementation

On Aug. 14, 2019, the U.S. Department of Homeland Security (DHS) published the Inadmissibility on Public Charge Grounds final rule that codifies regulations governing the application of the public charge inadmissibility grounds. See section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4).

On Oct. 2, 2019, DHS issued a corresponding correction document, which contains provisions that are effective as if they had been included in the final rule published on Aug. 14, 2019.

On Oct. 10, 2018, DHS issued a Notice of Proposed Rulemaking, which was published in the Federal Register for a 60-day comment period.
DHS received and considered over 266,000 public comments before issuing the final rule. The final rule provides summaries and responses to all significant public comments.

The Purpose of the Rule

The final rule enables the federal government to better carry out provisions of U.S. immigration law related to the public charge ground of inadmissibility.

The final rule clarifies the factors considered when determining whether someone is likely at any time in the future to become a public charge, is inadmissible (under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4)) and, therefore, ineligible for admission or adjustment of status.

The final rule also requires aliens in the United States who have a nonimmigrant visa and seek to extend their stay in the same nonimmigrant classification or to change their status to a different nonimmigrant classification to demonstrate, as a condition of approval, that they have not received, since obtaining the status they seek to extend or change, public benefits for more than 12 months, in total, within any 36-month period.

The final rule does not create any penalty or disincentive for past, current or future receipt of public benefits by U.S. citizens or aliens whom Congress has exempted from the public charge ground of inadmissibility.

Applicability and Exemptions

The final rule applies to applicants for admission and aliens seeking to adjust their status to that of lawful permanent residents from within the United States. The final rule also applies to applicants for extension of stay and change of status.

The final rule does not apply to:

- U.S. citizens, even if the U.S. citizen is related to a noncitizen who is subject to the public charge ground of inadmissibility; or
- Aliens whom Congress exempted from the public charge ground of inadmissibility, such as:

- Refugees;
- Asylees;
- Afghans and Iraqis with special immigrant visas;
- Certain nonimmigrant trafficking and crime victims;
- Individuals applying under the Violence Against Women Act;
- Special immigrant juveniles; and
- Those to whom DHS has granted a waiver of public charge inadmissibility.

Public Benefits that DHS Will Not Consider

Benefits received by U.S. service members. Under the final rule, DHS will not consider the receipt of public benefits (as defined in the final rule) by an alien who (at the time of receipt, or at the time of filing or adjudication of the application for admission, adjustment of status, extension of stay, or change of status) is enlisted in the U.S. armed forces, or is serving in active duty or in any of the Ready Reserve components of the U.S. armed forces

Benefits received by spouse and children of U.S. service members. DHS also will not consider the receipt of public benefits by the spouse and children of such service members (described above).

Benefits received by children born to, or adopted by, U.S. citizens living outside the United States. The rule further provides that DHS will not consider public benefits received by children, including adopted children, who will acquire U.S. citizenship under section 320 of the INA, 8 U.S.C. 1431, or children, residing outside the United States, of U.S. citizens who are entering the United States for the purpose of attending an interview under section 322 of the INA, 8 U.S.C. 1433.

Certain Medicaid benefits. DHS will not consider the Medicaid benefits received:

- For the treatment of an "emergency medical condition;"
- As services or benefits provided in connection with the Individuals with Disabilities Education Act;
- 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;
- By aliens under the age of 21; and
- By pregnant women and by women within the 60-day period beginning on the last day of the pregnancy.

Benefits received on behalf of a legal guardian. DHS will only consider public benefits received directly by the applicant for the applicant's own benefit, or where the applicant is a listed beneficiary of the public benefit. DHS will not consider public benefits received on behalf of another as a legal guardian or pursuant to a power of attorney for such a person. DHS will also not attribute receipt of a public benefit by one or more members of the applicant's household to the applicant unless the applicant is also a listed beneficiary of the public benefit.

Q. When does the final rule go into effect?

A. The final rule was initially scheduled to go into effect on Oct. 15, 2019. However, due to delays resulting from ongoing litigation, we implemented the final rule on Feb. 24, 2020 nationwide, including in Illinois where the rule was most recently enjoined by a federal court.

We will apply the final rule only to applications and petitions postmarked (or, if applicable, submitted electronically) on or after Feb. 24, 2020. We will adjudicate (approve or deny) applications for adjustment of status postmarked (or, if applicable, submitted electronically) before Feb. 24, 2020, under the prior policy, the 1999 Interim Field Guidance. Applications and petitions for extension of stay and change of status postmarked (or, if applicable, submitted electronically) before Feb. 24, 2020, will not be subject to the final rule.

In addition, regardless of whether the application or petition was filed before, on, or after the effective date, DHS will not consider receipt of public benefits excluded from consideration under the 1999 Interim Field Guidance (for example, Supplemental Nutrition Assistance Program and Medicaid) unless such benefits are received on or after Feb. 24, 2020. Aliens applying for adjustment of status do not need to report the receipt, certification or approval to receive, or receipt of previously excluded public benefits before Feb. 24, 2020.

For public benefits that were considered under the 1999 Interim Field Guidance (for example, Supplemental Security Income, General Assistance or Temporary Assistance for Needy Families or institutionalization for long-term care at government expense), DHS will consider the receipt of those benefits before Feb. 24, 2020, as a negative factor in the totality of the applicant's circumstances but will not consider such receipt a heavily weighted negative factor, regardless of the duration of past receipt.

Those applying for or petitioning for an extension of nonimmigrant stay or change of nonimmigrant status do not need to report an alien's receipt of public benefits before Feb. 24, 2020.

Q. What does the final rule change?

A. The final rule changes the definitions for public charge and public benefits. It also changes the standard that DHS uses when determining whether an alien is likely to become a "public charge" at any time in the future and is therefore inadmissible and ineligible for admission or adjustment of status.

In limited circumstances, and only at the request of USCIS, an alien may post a public charge bond and obtain adjustment of status, despite being determined inadmissible on the public charge ground. The final rule sets the minimum bond amount at $8,100 annually adjusted for inflation based on the Consumer Price Index for Urban Consumers; the actual bond amount would be dependent on the alien's circumstances. In addition, in certain circumstances, an alien may obtain a waiver of the public charge ground of inadmissibility.

The rule also makes nonimmigrants who have received—since obtaining the nonimmigrant status they are seeking to extend or from which they are seeking to change—public benefits (as defined in the final rule) for more than 12 months, in total, within any 36-month period generally ineligible for extension of stay and change of status.

Q. Who is subject to the public charge inadmissibility ground?

A. Unless specifically exempted by Congress (such as refugees, asylees, certain self-petitioners under the federal Violence Against Women Act, and certain T and U nonimmigrant visa applicants), aliens subject to the public charge ground of inadmissibility are those seeking:

- Immigrant or nonimmigrant visas abroad;
- Admission to the United States on immigrant or nonimmigrant visas; and
- Adjustment of their status to that of a lawful permanent resident from within the United States.

Most lawful permanent residents are not subject to inadmissibility determinations, including public charge inadmissibility, upon their return from a trip abroad. But some lawful permanent residents can be subject to the public charge ground of inadmissibility because specific circumstances dictate that they be considered applicants for admission.

Q. Who is exempt from this rule?

A. Congress has exempted certain classes of immigrants from the public charge ground of inadmissibility, such as, refugees, asylees, petitioners under the federal Violence Against Women Act, certain T and U visa applicants, and Afghans and Iraqis with special immigrant visas. This rule includes provisions clarifying the classes of individuals who are exempt from this rule, as well as those who are able to obtain a waiver of public charge inadmissibility.

Q. Which benefits are considered for the purposes of this rule?

A. DHS will only consider public benefits as listed in the rule:

- Any federal, state, local or tribal cash assistance for income maintenance
    - Supplemental Security Income
    - Temporary Assistance for Needy Families
    - Federal, State, local, or tribal cash benefit programs for income maintenance (often called General Assistance in the state context, but which may exist under other names)
- Supplemental Nutrition Assistance Program (formerly called Food Stamps)
- Section 8 Housing Assistance under the Housing Choice Voucher Program
- Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation)
- Public Housing under section 9 the Housing Act of 1937, 42 U.S.C. 1437 et seq.
- Most forms of federally funded Medicaid (with certain exclusions)

This rule also clarifies that DHS will not consider the receipt of designated public benefits by an alien who, at the time of receipt, or at the time of filing or adjudication of the application for admission, adjustment of status, extension of stay, or change of status, is enlisted in the U.S. armed forces or is serving in active duty or in any of the Ready Reserve components of the U.S. armed forces. DHS also will not consider the receipt of public benefits by the spouse and children of such service members.

The rule further provides that DHS will not consider public benefits received by children, including adopted children, who will acquire U.S. citizenship under section 320 of the INA, 8 U.S.C. 1431 or section 322 of the INA, 8 U.S.C. 1433.

DHS also will not consider:

- The receipt of Medicaid for the treatment of an emergency medical condition;
- Services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act;
- 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 benefits received by an alien under 21 years of age; or
- Medicaid benefits received by a woman during pregnancy and during the 60-day period beginning on the last day of the pregnancy.

The final rule also clarifies that DHS will only consider public benefits received directly by the applicant for the applicant's own benefit, or where the applicant is a listed beneficiary of the public benefit. DHS will not consider public benefits received on behalf of another as a legal guardian or under power of attorney for such a person. DHS will also not attribute receipt of a public benefit by one or more members of the applicant's household to the applicant, unless the applicant is also a listed beneficiary of the public benefit.

DHS will not consider the application for, certification or approval to receive, or receipt of certain previously excluded non-cash public before Feb. 24, 2020, and will not weigh heavily the receipt of previously included public benefits (such as cash assistance for income maintenance and long-term institutionalization) if received before Feb. 24, 2020.

Q. What amount/duration of public benefits matters?

A. The final rule includes a single duration-based threshold for the receipt of public benefits as part of the definition of public charge. The final rule considers an alien a public charge if the alien receives public benefits for more than 12 months, in total, within any 36-month period, such that the receipt of two benefits in one month counts as two months.

In considering how much weight to give to the receipt of public benefits that is 12 months or less, in total, within any 36-month period, an officer may consider the dollar amount of public benefit received, where applicable, and how long the alien had received the public benefit. However, no amount, where applicable, or duration will decide the outcome of a public charge inadmissibility determination, as this is a totality of the circumstances review based on all positive and negative factors in an applicant's case.

We will also consider whether an alien seeking an extension of stay or change of status has received, since obtaining the nonimmigrant status he or she seeks to extend or from which the alien seeks to change, public benefits for more than 12 months, in total, within any 36-month period, such that, for instance, the receipt of two benefits in one month counts as two months.

Q. Whose receipt of benefits is considered under this rule?

A. Under the rule, DHS will only consider the direct receipt of benefits by an alien for the alien's own benefit, or where the alien is a listed beneficiary of a public benefit. DHS will not consider public benefits received on behalf of another as a legal guardian or pursuant to a power of attorney for such a person. DHS will also not attribute receipt of a public benefit by one or more members of the alien's household to the applicant unless the applicant is also a listed beneficiary of the public benefit. Similarly, any income derived from such benefits received by other household members will not be considered as part of the applicant's household income.

Q. Which benefits are not considered?

A. The list of public benefits in the rule is exhaustive with respect to non-cash benefits. However, cash benefits for income maintenance may include a variety of general purpose means-tested cash benefits provided by federal, state, local or tribal benefit granting agencies. Any non-cash benefits not listed in the rule are excluded from consideration.

The rule does not include consideration of emergency medical assistance, disaster relief, national school lunch programs, foster care and adoption, student and mortgage loans, energy assistance, food pantries and homeless shelters and Head Start.

In addition, DHS will not consider, as part of a public charge inadmissibility determination, or as part of applications and petitions for extension of stay and change of status, public benefits received by members of the U.S. armed forces serving in active duty or in any of the Ready Reserve components, and by the service member's spouse and the service member's children.

Similarly, DHS will not consider:

- The receipt of Medicaid for the treatment of an emergency medical condition;
- Services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act;
- 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 benefits received by an alien under 21 years of age; or
- Medicaid benefits received by a woman during pregnancy and during the 60-day period beginning on the last day of the pregnancy.

Q. How will DHS determine whether someone is likely at any time to become a public charge for admission or adjustment purposes?

A. Under the final rule, "likely at any time to become a public charge" means more likely than not at any time in the future to become a public charge (in other words, more likely than not at any time in the future to receive one or more of the designated public benefits for more than 12 months, in total, within any 36-month period, such that, for instance, receipt of two benefits in one month counts as two months).

Under this final rule, inadmissibility based on the public charge ground is determined by looking at the factors set forth in 8 CFR 212.22 and making a determination of the applicant's likelihood of becoming a public charge at any time in the future based on the totality of the circumstances. This means that the adjudicating officer must weigh both the positive and negative factors when determining whether someone is more likely than not at any time in the future to become a public charge.

When determining whether an applicant is inadmissible on the public charge grounds, a USCIS officer must consider these factors about the applicant (as required by section 212(a)(4) of the INA and this final rule):

- Age;
- Health;
- Family status;
- Assets, resources and financial status;
- Education and skills;
- Prospective immigration status;
- Expected period of admission; and
- The sufficiency of the Form I-864 or Form I-864EZ (when required under section 212(a)(4)(C) or (D) of the INA).

Q. What factors weigh heavily in favor of a determination that someone is likely at any time to become a public charge?

A. The following factors will generally weigh heavily in favor of a finding that an alien is likely at any time to become a public charge:

- The alien is not a full-time student and is authorized to work but cannot show current employment, recent employment history or a reasonable prospect of future employment.
- The alien has received, or has been certified or approved to receive, one or more public benefits for more than 12 months, in total, within any 36-month period, beginning no earlier than 36 months before the alien applied for admission or adjustment of status on or after Feb. 24, 2020.
- The alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with his or her ability to provide for him or herself, attend school, or work and he or she is uninsured and has neither the prospect of obtaining private health insurance nor the financial resources to pay for reasonably foreseeable medical costs related to a medical condition.
- The alien has previously been found by an immigration judge or the Board of Immigration Appeals to be inadmissible or deportable based on public charge grounds.

Q. What factors weigh heavily against a determination that someone is likely at any time to become a public charge?

A. The following factors would weigh heavily against a finding that an alien is likely to become a public charge:

- The alien has household income, assets, or resources and support from a sponsor, excluding any income from illegal activities or from public benefits, of at least 250% of the Federal Poverty Guidelines for the alien’s household size.

- The alien is authorized to work and is currently employed in a legal industry with an annual income of at least 250% of the Federal Poverty Guidelines for a household of the alien's household size.
- The alien has private health insurance appropriate for the expected period of admission, so long as the alien does not receive subsidies in the form of premium tax credits under the Patient Protection and Affordable Care Act to pay for such health insurance.

Q. How can I learn more about public charge?

A. For more information on public charge, see:

- USCIS policy on public charge refer to the USCIS Policy Manual;
- USCIS Public Charge Fact Sheet; and
- Inadmissibility on Public Charge Grounds final rule and correction.