

THE BIDEN ADMINISTRATION PUBLIC CHARGE REGULATION: WHAT DOES IT MEAN FOR CHILDREN IN IMMIGRANT FAMILIES?



Approximately 1-in-4 children in the United States has an immigrant parent, and children of immigrants are the fastest growing group of children in the United States.¹ However, due to their immigration status, immigrant families face barriers to thriving in the United States, including barriers to accessing federal benefits that would support children's well-being. Although the vast majority of children with an immigrant parent are U.S. citizens and are not subject to restricted access to benefits, their access to health care, housing, nutrition, and income supports is affected if one or both parents are ineligible for benefits.² Even before the COVID-19 pandemic, children in immigrant families were less likely to have health insurance, more likely to experience food insecurity, and more likely to be living in low-income households than children with U.S.-born parents.³ It is important that government policies do not impose unnecessary barriers for children and families seeking to access public benefits or legal status that would support children's well-being.

How has public charge policy changed?

The public charge ground of inadmissibility has been part of federal immigration law for more than a century and has long been interpreted as applying only to those who are primarily dependent on the government for subsistence.⁴

The Biden Administration has published a final public charge rule that codifies long-standing public charge policy and strengthens protections for children and families who may be eligible for public benefits. This process started in March 2021 when the U.S. Supreme Court dismissed a case challenging the Trump Administration's public charge rule, which broadly expanded public charge policy and resulted in families avoiding health care, nutrition, and housing benefits that are important for children's health and development and for which they

¹ Children in U.S. immigrant Families, Migration Policy Institute, <https://www.migrationpolicy.org/programs/data-hub/charts/children-immigrant-families?width=1000&height=850&iframe=true>. (Accessed Apr. 19, 2021).

² Migration Policy Institute, Children in U.S. Immigrant Families (2019), <https://www.migrationpolicy.org/programs/data-hub/charts/children-immigrant-families?width=1000&height=850&iframe=true>.

³ Health Coverage of Immigrants, Kaiser Family Foundation (July 15, 2021), <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-of-immigrants/>. Mariana Chilton, et al., Food Insecurity and Risk of Poor Health Among US-Born Children of Immigrants, *American Journal of Public Health* (Mar. 2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2661461/>. Jeanne Batalova, Mary Hanna, and Christopher Levesque, Frequently Requested Statistics on Immigrants and Immigration in the United States, Migration Policy Institute (Feb. 11, 2021), <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states-2020#children-immigrants>.

⁴ "Public Charge Grounds of Inadmissibility and Deportability: Legal Overview," Congressional Research Service, Feb. 6, 2017, https://www.everycrsreport.com/files/20170206_R43220_6e03686544d907d3d96c4291b-b39a17268cdf8.pdf

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qualified.⁵ The U.S. Department of Homeland Security (DHS) subsequently reverted to the 1999 interim field guidance on public charge, which considered a more narrow group of benefits in the public charge determination and had been the norm for the previous two decades.⁶

In February 2022, DHS published a proposed rule on public charge that added critical protections for immigrant families seeking to access public benefits. On September 9, 2022, the Department published the final rule, which goes into effect December 23rd, 2022.

Why did public charge policy need to change?

Research confirms that the more restrictive 2019 rule resulted in a harmful chilling effect that negatively impacted children and their families.⁷ When an expanded public charge rule was first rumored in 2017, providers on the ground noticed that families' use of benefits under Medicaid and the Supplemental Nutrition Assistance Program (SNAP) declined by as much as 42 percent.⁸ A December 2019 survey found that approximately 48% of adults in immigrant families avoided SNAP, 45% avoided Medicaid and CHIP, 35% avoided housing subsidies, and approximately 25% avoided programs not included in the 2019 public charge rule like the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and free or reduced-price school lunches.⁹

The COVID-19 pandemic provides a case study of the harms of excluding immigrant families from key benefits. The 2019 public charge rule took effect just weeks after the declaration of the public health emergency related to the COVID-19 pandemic and amplified the pandemic's health and economic harm to children. Many immigrants were more exposed to COVID as essential workers and families reported that cash, food and employment were their most pressing needs during the pandemic, yet fear inspired by the 2019 public charge rule made immigrant families hesitant to access COVID-19 testing, treatment and vaccines, unemployment insurance, the Paycheck

⁵ Fact Sheet: The Public Charge Rule Harms Children," First Focus on Children, Feb. 2020. https://firstfocus.org/wp-content/uploads/2020/02/FACT-SHEET-Public-Charge_2-20.pdf

⁶ Public Charge Update: What Advocates Need to Know, Protecting Immigrant Families (May 13, 2021), <https://www.nilc.org/wp-content/uploads/2020/03/Public-Charge-What-Advocates-Need-to-Know-Now.pdf>.

⁷ DHS Docket No. USCIS-2019-0023, RIN 1615-AC38: Comments in Opposition to Proposed Rulemaking "Affidavit of Support on Behalf of Immigrants," First Focus on Children (Nov. 2, 2020), <https://www.regulations.gov/comment/USCIS-2019-0023-0210>. DHS Docket No. 2021-0004, RIN 1615-ZB87: Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input," First Focus on Children (May 19, 2021), <https://www.regulations.gov/comment/USCIS-2021-0004-7076>.

⁸ Cheasty Anderson, Public Charge and Private Dilemmas: Key Challenges and Best Practices for Fighting the Chilling Effect in Texas, 2017-2019, Children's Defense Fund - Texas 3-4 (Nov. 6, 2020), https://cdf.texas.org/wp-content/uploads/sites/8/2021/01/Public-Charge-and-Private-Dilemmas_report_020.pdf.

⁹ Hamutal Bernstein et al., Amid Confusion Over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019, Urban Institute (May 2020), https://www.urban.org/sites/default/files/publication/102221/amid-confusion-over-the-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-in-2019_3.pdf.

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Protection Program, and Pandemic EBT.¹⁰

Our nation is stronger and our future is brighter when we promote children's well-being and healthy development, including through access to public benefits that support families' income and resources. Research also shows that access to lawful permanent residence can help lift families out of poverty and create economic prosperity for immigrants and their children,¹¹ leading to better educational and workforce outcomes when children reach adulthood.¹² A clear and fair public charge rule is critical for ensuring that children in immigrant families can access supports that advance their healthy development and positive future outcomes.

What does the new public charge rule do?

The new public charge rule adds critical protections to ensure that immigrant families and their children can access public benefits that promote children's healthy development. People with certain immigration statuses, such as asylum, refugee status, special immigrant juvenile status, survivors of trafficking, and other protected groups are exempt from the public charge consideration.

Under the new rule, only two types of government programs will be considered in public charge determinations:

- Public cash assistance for income maintenance, as evidenced by receipt of Temporary Assistance to Needy Families (TANF), Supplemental Security Income (SSI), or state and local General Assistance programs; and
- Long-term institutionalization at government expense (excluding short-term care, rehabilitative care, and home- and community-based services).

An individual's receipt of these benefits alone will not result in a determination that someone is likely to become a public charge. Rather, an officer must examine the totality of an applicant's circumstances, looking favorably on the Affidavit of Support (when required) and applying the five statutory factors of age, health, family status, financial status, and education. These factors must be balanced, and **no one factor alone will result in a determination that someone is likely to become a public charge.**

¹⁰ Marion Davis, The Impact of COVID-19 on Immigrants in Massachusetts: Insights from our Community Survey, Massachusetts Immigrant and Refugee Commission (Aug. 2020), <https://www.miracoalition.org/wp-content/uploads/2020/08/MIRA-COVID-19-survey-report-Aug2020.pdf>. Hamutal Bernstein et al., Immigrant-Serving Organizations' Perspectives on the COVID-19 Crisis, Urban Institute 8-11 (Aug. 2020), <https://www.urban.org/research/publication/immigrant-serving-organizations-perspectives-covid-19-crisis>.

¹¹ Demitrios G. Papademetriou, Madeleine Sumption, and Will Somerville, The Social Mobility of Immigrants and Their Children, Migration Policy Institute 20 (June 2009), <https://www.migrationpolicy.org/research/social-mobility-immigrants-and-their-children>.

¹² Lisa A. Keister, Jody Angius Vallejo, and E. Paige Borelli, Mexican American Mobility: An Exploration of Wealth Accumulation Trajectories, Stanford Center on Poverty and Inequality (Apr. 2013), https://inequality.stanford.edu/sites/default/files/media/_media/working_papers/keister_agius-vallejo_borelli_mexican-american-mobility.pdf

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Non-cash, supplemental, and special purpose benefits are **NOT** considered in the public charge determination. **The following is a non-exhaustive list of benefits that families can receive without fearing immigration consequences:**

- The Children's Health Insurance Program (CHIP)
- Medicaid (except for use in long-term institutional care)
- The Supplemental Nutrition Assistance Program (SNAP) and other nutrition programs
- Federal Public Housing, Section 8 Housing Vouchers, and Section 8 Project-based Rental Assistance
- Special-purpose benefits, like child care assistance, Low Income Home Energy Assistance Program (LIHEAP) assistance, nutrition assistance, rental assistance, or crime victim compensation or restitution
- Disaster assistance
- Tax-related benefits, such as the Child Tax Credit, the Earned Income Tax Credit, or any other tax credit at the federal, state, local, tribal, or territorial level
- Testing or immunization for a communicable disease

The rule also states that an applicant's child or family member's receipt of public benefits will **NOT** be considered in a public charge assessment. Lastly, the rule makes it harder for a future administration to radically change public charge policy.

What comes next?

DHS plans to develop guidance to help immigration officers apply this regulation. The Biden Administration has also announced its plans to conduct outreach and engagement to address the chilling effect of the 2019 rule and ensure that families know about the new rule. Both steps are important to regain trust with immigrant families and assure that families access the health care, nutrition, housing, and other benefits that support children's health and safety.

It is likely that opponents will challenge the public charge rule in court, as they have many other Biden immigration policies. There are solid grounds for a court to uphold the rule. The Biden Administration took the proper notice and comment steps in issuing the final rule, and the policy is consistent with the field guidance that was in effect for 20 years and with public charge policy that was in place for a century before that.

Conclusion

While a clear and fair rule mitigates some of the harms of the public charge policy, the fact remains that public charge is one in a web of harmful policies that keep children in immigrant families from accessing the support they need. **All** children should have access to health care, nutritious food, safe housing, and income supports that ensure their health and stability now and in the future. Repealing immigration provisions like public charge, the five-year waiting period, and other barriers keeping children in immigrant families from accessing important benefits would provide children and those who care for them the resources they need to thrive, with positive impacts on children, their communities, and our economy.

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