

# Key Points for Assisters to Help Clients Understand Public Charge



*This handout is for people working directly with clients to help explain specific aspects of the public charge regulation. Background information is available here:  
<https://protectingimmigrantfamilies.org/resources/>*

**This document is not intended to provide legal advice.**

*Updated December 2022.*



## Talking points to share with clients

- The 2019 public charge rule, which expanded benefits considered in a public charge determination, is no longer in effect. A new public charge rule, which is very similar to the 1999 guidance, went into effect on December 23, 2022.
- If you decide to apply to become an adult legal permanent resident ('Green Card' holder), the benefits your family members use will not be considered in the public charge test. The only benefits considered are those used by the 'Green Card' applicant themselves.
- Laws protect the privacy of people who apply for or receive help through public programs.
- Get help to decide what's best for your family. If you can, consult with an immigration attorney or BIA-accredited representative about your own situation.
- Most immigrants applying for their 'Green Card' are not eligible for benefits that count under the public charge test.



## Quick Reference for Assisters

- The 2019 rule was in effect from February 24, 2020, to March 9, 2021. Applications finalized during that time were considered under the 2019 rules. Applications that were still pending on March 9, 2021, will use the rules from 1999.
- With limited exceptions, benefit agencies can only share information with other government agencies for administrative purposes. In addition, individuals applying for benefits for children or other household members are not required to provide their immigration status – only the applicant must provide their immigration status.
- Individuals applying while living in the U.S., which are guided by USCIS regulations, follow the 2022 final rule beginning in December 2022. Applications for people currently living outside the U.S. are guided by Department of State regulations, which follow the 1999 guidance.
- Benefits used by family members are not considered in the public charge test. The only benefits considered are those used by the applicant themselves.

## When the public charge test is applied



When an individual applies for a visa to enter the U.S. temporarily or permanently



When someone living in the U.S. applies for an adjustment of status to Lawful Permanent Resident (i.e., Green Card holder)



When a Lawful Permanent Resident reenters the U.S. after being abroad for more than 6 consecutive months



## The public charge test does not apply to many immigrants and public benefits

### Immigration statuses *not* affected

- Lawful Permanent Residents applying for citizenship
- Refugees
- Asylees
- Survivors of domestic violence, trafficking, and other serious crimes (U and T visa holders, and VAWA petitioners)
- Special Immigrant Juveniles
- Violence Against Women Act (VAWA) self-petitioners
- Certain people paroled into the U.S.
- Benefits received by active-duty service members, and by their spouses and children

### Public benefits *not* included

The following list is based on USCIS final rule from December 23, 2022.

- Any benefits received by the applicant's family members
- Supplemental Nutrition Assistance Program for Women Infants and Children (WIC)
- Supplemental Nutrition Assistance Program (SNAP)
- Emergency Medicaid
- School-based Medicaid services (e.g., the Individuals with Disabilities Education Act)
- Medicaid services except for Long-Term Care services
- Child Health Plan Plus (CHP+)
- Medicare, including Use of Low-Income Subsidy (LIS) for Medicare Part D prescription drug coverage
- Advanced Premium Tax Credits
- Cost Sharing Reductions
- Colorado Indigent Care Program (CICP)
- Sliding Fee Discount Program at National Health Center Corps certified sites
- Energy Assistance (LEAP)
- Free/Reduced Price School meals
- Transportation vouchers or non-cash transportation services
- Non-cash TANF benefits
- Housing program, such as Section 8
- Utility Assistance, such as Emergency Broadband Benefits
- Federal Earned Income Tax Credit and Child Tax Credit
- Disaster relief
- Pell grants and student loans
- Social Security retirement benefits\*
- Veteran's benefits
- Childcare services

### Any program not explicitly listed in the rule

\*Specific related programs are included: Social Security Income (SSI).



## Factors that are considered as part of the Public Charge test

The public charge test considers only the following factors. Based on these factors, a person is considered a ‘public charge’ if they are likely to become “primarily dependent on the government for subsistence.”

### Considerations in the Rule\*

- Age
- Health
- Family status\*\*
- Income and resources
- Education and skills
- Sponsorship/Affidavit of support
- Use of federally funded Medicaid for long-term institutional care\*\*\*
- Use of federal, state, local, and tribal cash assistance for income maintenance programs (e.g., SSI, TANF)

\* Only the benefits included in this list can be considered under the rule

\*\* This includes whether a family member or another person with enough income or resources has promised to support you.

\*\*\*The 2022 final rule specifies that this does include home and community-based services or institutionalization for short periods of rehabilitation.



### Timeline of Changes

- February 24, 2020 - March 9, 2021: 2019 public charge rule was in effect
- March 9, 2021: 2019 public charge rule was removed and 1999 rules went back in effect
- March 9, 2021 – December 23, 2022: 1999 rules in effect
- December 23, 2022 – ongoing: 2022 final rule in effect



### Frequently Asked Questions

#### How is the use of public benefits measured under public charge?

Someone is considered a public charge if they are likely to become “primarily dependent on the government for subsistence.” Current or past use of cash assistance for income maintenance and federally funded long-term institutional care are considered in a public charge assessment as well as the other considerations listed above (age, health, etc.). In the 2022 final rule, USCIS indicated that if a program typically does not provide the primary source of income, or is available without income-based eligibility rules, that it would not be considered for public charge. It is important to note that the use of the benefits now included in a public charge test does not automatically make someone likely to become a public charge. The final decision will consider all of a person’s circumstances.

#### Is the public charge assessment new?

No, public charge tests have been used in immigration decisions for over a hundred years.

#### How is public charge defined?

Someone is considered a ‘public charge’ if they are a non-citizen who is likely to become primarily dependent on the government for support.

## **What happens if a person is determined likely to become a public charge?**

If immigration officials determine an applicant is likely to become a public charge, the individual's application for admission or adjustment of status may be denied. The public charge determination does not impact an individual's current status but could impact their ability to enter or remain in the U.S. legally once their visa status expires.

## **Is a dependent's or family member's use of benefits considered in a person's public charge test?**

No, only the applicant's use of benefits is considered. For example, if a citizen child receives child-only cash TANF benefits, the child's benefits will not be considered in a parent's Green Card application unless the family relies on this cash as their sole means of income.

## **How are the current and new rules different from the 2019 public charge rule?**

The rules have different definitions of public charge and include different factors that can be considered in deciding if a person is likely to become a public charge. Both the 1999 and 2022 rules only consider the public benefits of cash assistance for income maintenance programs and federally funded Medicaid for institutionalization for long-term care. The 2019 rule expanded the benefits considered to include federal housing assistance, SNAP, and Medicaid. In addition, the 2019 rule asked whether someone is more likely than not to use 12-months of public benefits in a 36-month period, rather than if someone is likely to rely on government cash assistance or institutionalization for the majority of their support.

## **My client is still worried about public charge. How can I reassure them it is safe to apply for public benefits?**

This is a very common fear. The recent changes to public charge caused a large 'chilling effect' where many immigrants and family members of immigrants decided to disenroll from benefits or to not enroll in benefits at all. You can remind clients of how benefits can support the health and financial stability of their family. In these discussions, remember that you are not a lawyer and cannot give legal advice. You can refer your client to an immigration attorney who can give legal advice and specific advice on what is best for each family.

## **Is there a list of immigration lawyers in Colorado?**

Yes, you can find Colorado immigration lawyers listed here:

<https://www.immigrationlawhelp.org/search?state=CO>

## **Where can I go for additional resources?**

- Covering Kids and Families resources **for assisters** here: <https://ckf.cchn.org/public-charge-resources/>
- Protecting Immigrant Families **national campaign** resources available here: <https://protectingimmigrantfamilies.org/>