Immigration issues: Public charge grounds and the presidential proclamation

The new rule redefines public charge and expands the programs that the federal government considers in public charge determinations to include previously excluded health, nutrition and housing programs.

For the first time the federal government is seeking to include non-cash public benefits such as non-emergency Medicaid, SNAP and public housing.

Research shows that when eligibility rules change for public benefits programs there is evidence of a “chilling effect” that discourages immigrants from using public benefits programs for which they are still eligible.

Statements on inadmissibility on public charge grounds

U.S. Department of Homeland Security rule

- On Sept. 22, 2018, DHS posted an unofficial draft Notice of Proposed Rulemaking (NPRM) regarding the Inadmissibility on Public Charge Grounds, and the AMA quickly responded with a press statement in opposition. On Oct. 10, 2018, the Administration released its formal proposed rule regarding the Inadmissibility on Public Charge Grounds. The proposal denies entry or permanent legal status for noncitizens who may receive one or more public benefits including, for the first time, non-emergency Medicaid, the Supplemental Nutrition Assistance Program (SNAP) and several public housing programs. Consistent with AMA policy adopted during the 2018 Annual Meeting, the AMA submitted a comment letter in opposition of the proposed rule. The Administration published its final rule on Aug. 14, 2019.

- On Oct. 11, 2019, judges in separate cases before the U.S. District Courts for the Southern District of New York (SDNY) and Eastern District of Washington preliminarily enjoined the DHS from implementing and enforcing the final rule related to the public charge ground of inadmissibility. The public charge rule has already had a chilling effect, leading many immigrant families to avoid accessing vital health, nutrition and housing programs. The AMA joined with other health care organizations in submitting amicus briefs (CA: amicus; SDNY: amicus 1 and amicus 2; Wash.: amicus) in the separate cases. The DHS’ final rule was
slated to take effect on Oct. 15, 2019, but two of the injunctions are nationwide and prevent the DHS from implementing the rule anywhere in the U.S. until there is final resolution in the cases. Linked here is a brief overview of the public charge test.

U.S. Department of State rule

On Oct. 11, 2019, the U.S. Department of State (DoS) issued an interim final rule updating its definition of public charge to align its procedures with DHS’ public charge final rule. On Oct. 24, 2019, the DoS published a request for public comment on the form DS-5540 or the public charge questionnaire. The DoS proposes to use the public charge questionnaire “to collect more detailed information on a visa applicant’s ability to support himself or herself. Consular officers will use the information to assess whether the applicant is likely to become a public charge [at any time], based on the totality of the circumstances.” On Oct. 30, 2019, the DoS issued a “Notice of Information Collection Under OMB Emergency Review: Immigrant Health Insurance Coverage.” The DoS gave the public approximately 48-hours to comment on the collection of information included in the emergency notice regarding the DoS’ ability to collect information from visa applicants regarding the Presidential Proclamation (see more on the Presidential Proclamation below). As a result, the AMA submitted a comment letter to the DoS opposing the interim final rule, the expansion of the public charge questionnaire and the information collection request related to the Presidential Proclamation.

U.S. Department of Justice rule

The U.S. Department of Justice (DOJ), which oversees immigration courts and the Board of Immigration Appeals, is expected to publish a proposed rule that addresses the public charge deportability ground based on the DHS’ public charge final rule. The DOJ rule could potentially make it easier for the Administration to deport legal immigrants who use certain public benefits such as Medicaid. Once publicly released, the AMA will review the proposal to determine if a comment letter is warranted.

Presidential proclamation requiring health care for immigrants

On Oct. 4, 2019, the president issued a Proclamation that, beginning Nov. 3, 2019, the U.S. would restrict legal immigration into this country by people who are uninsured and cannot pay the costs of their health care. This restriction would operate independently of the “public charge” determination. The AMA is extremely concerned about the proclamation’s potential negative impact on individuals and families, who are legally immigrating to the U.S., to

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access health care services. The AMA submitted a letter to the president of the United States strongly urging him to rescind the proclamation.

On Nov. 2, 2019, a federal judge in Oregon blocked the Presidential Proclamation from taking effect for up to 28 days. The court will hold another hearing on the preliminary injunction Nov. 22, 2019.

**Additional advocacy activities**

Learn about the AMA's advocacy efforts related to:

- Health and Safety Conditions at the Southern Border
- Extension of Family Detention
- Nonmilitary Deferred Action
- Deferred Action for Childhood Arrivals (DACA)
- Visa and Green Card Challenges