



Leadership Council  
of *Aging Organizations*

***Katie Smith Sloan, Chair***

April 25, 2022

Samantha Deshommnes, Chief  
Regulatory Coordination Division, Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
Department of Homeland Security

**Re: Re: DHS Docket No. USCIS-2021-0013, Comments in Response to Proposed Rulemaking, Public Charge Ground of Inadmissibility**

**Dear Sir/ Madam:**

The Leadership Council of Aging Organizations is writing in response to the Department of Homeland Security's (DHS, or the Department) Notice of Proposed Rulemaking (NPRM or proposed rule) to express support for and recommendations to improve the public charge proposed rule published in the Federal Register on February 24, 2022. We believe that there should be no public charge barrier to immigrate to the U.S., and we will continue to work to change the statute. Until then, this proposed rule represents a commonsense approach to implementing the law. If finalized with our recommended changes, the rule would provide needed clarity and stability for older adults and people with disabilities who are immigrants. We urge that you finalize a rule that includes our recommendations as soon as possible.

The Leadership Council of Aging Organizations (LCAO) is a coalition of 69 national nonprofit organizations concerned with the well-being of America's older population and committed to representing their interests in the policy-making arena. LCAO serves as a source of information about issues affecting older adults and provides leadership and vision as America meets the challenges and opportunities presented by our aging society. Our organizations have expertise in economic security, nutrition and food security, housing, health care, and other issues facing older adults and people with disabilities, and we work to reduce barriers and celebrate the contributions of these diverse populations.

As a coalition of advocacy organizations supporting the interests of older adults and people with disabilities, LCAO supports a finalized public charge rule that narrows the definition and considers the fewest public benefits programs possible. The narrowest definition possible of public charge protects older adults and people with disabilities at risk of having to choose between their immigration status and their health coverage and income supports. Over the past few years, LCAO members have already reported a widespread "chilling effect" in the communities they serve that is causing older adults and their families to forgo benefits due to fear of public charge consequences. This has put public health at risk during a pandemic, and it has a disproportionate impact on older adults and people with disabilities.

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We appreciate that the NPRM recognizes that use of health care, nutrition, or housing supports should in no way be linked to the exclusionary “public charge” provision. These core programs represent our country’s policy choices about how to help all people, including older adults and people with disabilities, succeed. Our immigration policies should not discourage immigrants and their family members from seeking the health care or income supports they need. Likewise, we urge DHS to ensure its public charge policy does not exclude people from immigrating simply because conditions in their countries of origin, discrimination they may have faced in the U.S., and other circumstances such as age and disability that have made it difficult for them to complete an education, secure professional credentials, or earn a high income.

Clear, administrable regulations are needed so that immigrants, their families, along with aging and disability service providers, Medicaid service providers, enrollment assisters, and benefits administrators, can understand how a public charge assessment will be determined. Lack of clarity can cause the same damage as an overly broad rule. It can cause immigrant families to avoid interacting with the government and forgo critical public benefits for which they are eligible because of fear and confusion. These harms can be far reaching, such as an older adult forgoing the care, they need to remain healthy and safe in their home or going without income supports and facing hunger or eviction. These harms impact not only the individual’s health and wellbeing, but also often necessitate costlier interventions down the road that our safety nets must bear.

Our comments focus on aspects of the rule we support and changes we recommend to best ensure the public charge regulations do not discriminate against older adults and people with disabilities and minimize the chilling effect.

### **Totality of the Circumstances**

We support the proposed rule’s focus on the totality of the circumstances and favorable consideration of the affidavit of support. Numerous factors throughout the rule’s history and proposed as part of this rule disproportionately or uniquely impact older adults and people with disabilities, including SSI, long-term institutionalization, health, and age. Moreover, because rates of disability are higher among communities of color, these factors also disproportionately impact immigrants of color. While we recommend excluding or limiting consideration of SSI and long-term institutionalization as discussed below, we recognize that age and health are both statutory factors that cannot be changed through this rulemaking. Therefore, to limit the discriminatory impact of the rule, it is critically important that no statutory factor be given determinative weight. Instead, we agree with DHS’s proposed approach of using the affidavit of support to mitigate issues arising under the statutory factors within the totality of circumstances.

Many older immigrants make important contributions to their households, including providing income, caregiving, and other support that enables other household members to work outside the home. These contributions in turn benefit our communities and economy. We also strongly support the proposed rule’s clarification that the presence of a disability or any medical condition is not alone a sufficient basis to determine that a noncitizen is likely at any time to become a public charge or that the individual is likely to require long-term institutionalization at government expense.

### **Exclude consideration of Medicaid completely, including for long-term institutionalization.**

We urge DHS to not include “long-term institutionalization” in the definition of “Likely at any time to become a public charge” under 8 CFR § 212.21 (a). To make the public charge rule as clear as possible

for both immigrants and adjudicators, DHS should exclude any type of Medicaid benefit from consideration. More than 6 in 10 nursing home residents rely on Medicaid – it is a commonly used benefit. However, because only older adults and people with disabilities rely on Medicaid for long-term care, including long-term institutionalization in the public charge test expressly discriminates against this population. Also, because public charge is a forward-looking test, it is difficult to provide clear messages to people who need Medicaid that their enrollment for non-institutional purposes now will not be used to indicate that they will rely on Medicaid should they need long-term care in the future.

DHS should not put access to Medicaid at risk or discourage enrollment in any programs that serve to keep older adults and people with disabilities healthy, together with their families, and integrated in their communities. Medicaid is particularly critical to helping people with disabilities, including older adults, live in the community because it covers services and supports that private insurance does not, such as personal care, transportation, and home modifications. We appreciate DHS's clarification in the preamble to the NPRM that home and community-based services (HCBS) are not to be included. It is important to keep in mind that older adults receive HCBS from a variety of programs, including Medicaid, Medicare and Older Americans Act programs. We are concerned that if the rule does not exclude all of Medicaid that older immigrants may be nonetheless afraid to access any type of HCBS or other health support. As discussed above, the chilling effect of the public charge policy has extended well beyond the benefits named in the rule itself. LCAO members have witnessed older adults forgoing enrolling in programs like Medicaid and SNAP that help them meet their basic needs even though there are no current public charge implications.<sup>1</sup>

If DHS does decide to include “long-term institutionalization,” we support the limitations DHS has proposed and urge as narrow of a definition as possible that places minimal weight on past institutionalization. We strongly support clarification in both the preamble to the final rule and sub-regulatory guidance that HCBS is not included. With respect to referencing a specific length of time when defining “long-term” and directing adjudicators to consider any evidence that past or current institutionalization is in violation of Federal law, LCAO endorses the comments submitted by Justice in Aging.

#### **Limit consideration of public benefits use to only *current* use of TANF and SSI.**

We urge DHS to clarify in the final rule that only two federal programs for cash assistance are relevant to the public charge test. First, we recommend clarifying that all state, tribal, territorial, or local programs, including any cash assistance, are excluded. Older adults receive critical support from a variety of programs funded by various entities. Including non-federal programs that vary from state to state in both name and form makes the rule complicated to explain to impacted individuals and complicated to administer. To best mitigate the chilling effect and enable immigrant families to thrive, DHS must narrowly and clearly define the public benefits to be considered.

Second, we recommend limiting the public charge test to consideration of *current* receipt of TANF or SSI. Public charge is a forward-looking test, but past use of benefits is not a good predictor of future need.

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<sup>1</sup> For instance, in 2019, the National Council on Aging (NCOA) surveyed agencies nationwide such as senior centers, State Health Insurance Assistance Programs, Benefits Enrollment Centers, and SNAP grantees. Forty-seven percent of responding organizations indicated they had noticed a chilling effect, and 45% had clients ask about dis-enrolling from benefits or refusing services after the 2019 rule change was proposed.

For example, an individual who relied on temporary cash-assistance like TANF or SSI and no longer receives them may have experienced a change in circumstances that makes them unlikely to need or even qualify for these benefits in the future. Limiting consideration of SSI is particularly important for mitigating the public charge policy's discriminatory effect on older adults and people with disabilities. As with long-term institutionalization, older adults and people with disabilities are the only populations eligible for SSI.

**The COVID-19 pandemic has exacerbated the harmful impacts of public charge.**

As a coalition of organizations supporting the health and wellbeing of older adults, we also recognize the harmful impacts of public charge on COVID-19 pandemic protections and supports. Older adults and people with disabilities, particularly in low-income communities and communities of color, have been disproportionately impacted by the pandemic. Programs such as Medicaid have served as a critical network of support during this time and have kept mental health clinics running, rural hospitals open, community health clinics staffed, and ensured home and community-based services remained available to communities most affected by the pandemic. The chilling effect of public charge makes it more difficult for community-based providers to reach older adults and people with disabilities most in need of support. As we continue to work with communities most at-risk of COVID-19 infection and complications, barriers like public charge make those life-saving efforts more difficult. We, therefore, appreciate your efforts to clarify the public charge rule and urge you to consider LCAO's recommendations to ensure the final rule reflects our collective efforts to minimize its harmful impacts and better reflect our nation's values.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact Katie Smith Sloan, LCAO Chair, to provide further information.

Sincerely,

A handwritten signature in black ink that reads "Katie Smith Sloan". The signature is written in a cursive, flowing style.

Katie Smith Sloan, LCAO Chair