



**Safe and Accessible:
Immigrants' Access to Healthcare, Public Charge,
and Safe Spaces in Health Care Centers**

April 14, 2020

Hayley Burgess, Communications Strategist, Media and Messaging

National Immigration Law Center



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Presenters

- ▶ Hayley Burgess, Communications Strategist, Media and Messaging, National Immigration Law Center
- ▶ Gabrielle Lessard, Senior Policy Attorney (NILC)
- ▶ Mayra Joachin, Staff Attorney (NILC)

Outline

- ▶ COVID-19 Messaging Guidance
- ▶ COVID-19 Relief Legislation
- ▶ Public Charge
- ▶ Safe Spaces: Health Care Facilities
- ▶ Resources
- ▶ Q&A

COVID-19 Messaging Guidance

Hayley Burgess,
Communications Strategist, Media and
Messaging

Overview

- ▶ The global public health and economic crisis caused by COVID-19 has amplified preexisting fractures in our society – fractures which threaten our collective wellbeing
- ▶ Low-income immigrants and their families are being disproportionately impacted by COVID-19
- ▶ Immigrants are playing essential roles in the pandemic response, but are being largely excluded from relief packages
- ▶ Immigrants will be protagonists in our nation's recovery and will help us emerge from this crisis as a stronger and more resilient society

General Messaging Advice

- ▶ Lead with values
 - ▶ Numbers and charts only go so far. We need to lead with messages that have the potential to change hearts and minds
- ▶ Be specific about identifying problems and solutions
 - ▶ What are we up against?
 - ▶ How are we going to fix it?
- ▶ Present a vision for the future we want
- ▶ Opportunity Agenda for more general messaging guidance: opportunityagenda.org

General Messaging

- ▶ In these difficult times, we are reminded of each other's shared humanity and that we are interdependent
- ▶ Immigrants are on the frontlines confronting this crisis and will help drive our country's recovery
- ▶ In times of crisis, systems and structures are tested, and we are seeing this in the COVID-19 pandemic
 - ▶ This is an opportunity for us to reimagine what society looks like post-COVID-19 and to create a vision for an inclusive and equitable society that takes care of everyone, immigrants included.

Messaging About Policy & Solutions

- ▶ This virus doesn't discriminate; our policies to confront it shouldn't either
- ▶ Divisive policies and anti-immigrant rhetoric only make this crisis worse
- ▶ We need bold and visionary leadership to create inclusive and equitable solutions that recognize the role of immigrants as protagonists in our nation's recovery and create opportunities for all to thrive

Messaging About Policy & Solutions

- ▶ We envision a post-COVID-19 society where our government cares for all of us and policymakers prioritize our collective well-being over partisan politics. One in which everyone has access to supports and services that enable us to thrive, including:
 - ▶ Pathways to citizenship
 - ▶ A stronger safety net that allows people to take care of themselves and their families
 - ▶ Strengthened workers rights policies – job security, access to unemployment insurance benefits, workplace protections, etc.
 - ▶ Medical care for all, regardless of where you were born or how much money you make
 - ▶ Suspension of the Trump administration's harmful public charge rule

COVID-19 Relief Legislation & Public Charge

Gabrielle Lessard,
Senior Policy Attorney

Introduction

- ▶ The COVID-19 virus is an international public health crisis
- ▶ The highly infectious nature of the virus places everyone at risk if anyone is without access to testing and treatment
- ▶ The Congressional responses to the virus maintain gaps in immigrants' eligibility for healthcare programs
- ▶ The Public Charge policy and aggressive immigration enforcement deter immigrants and their family members from accessing services for which they are eligible

COVID-19 Relief Legislation



COVID-19 Relief Legislation

- ▶ The Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, (H.R. 6074). Included funding for the development of a vaccine and local health department funding.
- ▶ The Families First Coronavirus Response Act (H.R. 6201) requires health insurers to provide COVID-19 testing, and any future vaccine, free of charge
 - ▶ allocated \$1 billion to pay for COVID-19 testing of uninsured
 - ▶ gives states the option to provide testing of uninsured individuals through their Medicaid programs

CARES Act

The Coronavirus Aid, Relief and Economic Security Act (CARES) Act:

- ▶ Increases and extends Affordable Care Act funding for Community Health Centers
- ▶ Provides a \$100 billion fund to reimburse eligible health care providers for expenses and lost revenue related to COVID- 19.
- ▶ Delays cuts in Disproportionate Share Hospital funding to hospitals that serve a substantial number of indigent patients
- ▶ expanded the definition of uninsured to include people in plans and programs that are not Medically Essential Coverage
- ▶ Does not fund treatment directly

The Work Continues

- ▶ Immigrants are disproportionately on the front lines as essential workers, including health care providers, grocery workers, agricultural workers, delivery people and workers in food processing plants
- ▶ As Congress works on another round of COVID-19 response legislation, it must provide access to essential testing and treatment for everyone who lives in this country

Public Charge



Public Charge: Key Facts

A public charge is a person who is dependent on the government for support

- A person who is deemed to be **likely** to become a public charge in the future can be denied:
 - permission to come to the US or
 - lawful permanent resident (LPR) status (a green card)
- This is the public charge grounds of *inadmissibility*

Why is Public Charge a Public Health Issue?

Immigrants and people in mixed-status families often avoid essential services because of fears that accessing services will undermine their ability to remain in the U.S.

- ▶ The effects were seen before the regulations were implemented
- ▶ People avoid benefits, such as WIC, that do not have public charge implications
- ▶ People who are exempt from the rule avoid benefits

Nearly half of community health centers in a 2019 Kaiser Family Foundation study reported that immigrant patients were refusing to enroll in Medicaid

DHS Announcement

- ▶ USCIS has announced that it “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...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).
- ▶ States that people who use public benefits because of COVID-19 related factors like quarantine or employer shutdown may submit a letter of explanation



Green Card Eligibility +

Green Card Processes and Procedures -

Adjustment of Status

Consular Processing

Concurrent Filing

Visa Availability and Priority Dates

Travel Documents

Employment Authorization Document

Finding a Medical Doctor

Affidavit of Support

Public Charge

Child Status Protection Act

While Your Green Card is Pending

After We Grant Your Green Card +

Alert: USCIS encourages all those, including aliens, with symptoms that resemble Coronavirus 2019 (COVID-19) (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.

Where does public charge come up?

Department of State (DOS)

Public charge policies applied to applications for visas or green cards submitted and processed **outside** the United States. This is done through consular offices around the world.

Effective February 24th

Department of Homeland Security (DHS)

Public charge policies applied to applications for visas or green cards processed **inside** the United States.

Effective February 24th

Department of Justice (DOJ)

Public charge policies for lawfully present immigrants who have **already been admitted** to the United States.

Does this test apply to everyone?

Public charge inadmissibility primarily affects family-based immigrants

Here are some of the people that are **exempt**:

- Refugees and Asylees
- Certain domestic violence survivors, including VAWA self-petitioners
- Applicants/ recipients of U or T visa (Survivors of Trafficking and other Serious Crimes)
- People applying for TPS

How does the public charge test work?

Age

Income and
Financial Status

Health

Education and Skills

Family Status

Affidavit of Support

Public charge inadmissibility is forward looking – immigration/consular officials look at a multiple factors to project whether a person will become a public charge **in the future.**

DHS/DOS Public Charge Regulations

DEFINITION

A new definition of public charge

TOTALITY OF CIRCUMSTANCES

Factors and standards added to the totality of circumstances test make it harder for low and moderate income people to succeed

ADDITIONAL BENEFITS

Additional public benefits programs can be considered by immigration officials.

New Definition

A person who “receives one or more public benefits... for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months).”

- ▶ Specific benefits listed in the regulations only
- ▶ People who will be subject to a public charge assessment are rarely eligible for the benefits considered

Which Benefits are Included?

Federal, state, local or tribal **cash assistance** for income maintenance, and:

- ▶ SNAP (Food Stamps)
- ▶ Section 8 housing assistance
- ▶ Public housing
- ▶ Medicaid, except:
 - ▶ emergency services
 - ▶ for anyone under 21 years of age
 - ▶ during pregnancy and for 60 days after

USCIS March 13 Announcement

USCIS announced that the agency will NOT consider

“...testing, treatment, nor preventative care (including vaccines, if a vaccine becomes available) related to COVID-19 in a public charge determination... even if such treatment is provided or paid for by one or more public benefits.”

Need to get the word out!

Totality of Circumstances test

Age

**Income and
Financial Status**

Health

Education and Skills

Family Status

Affidavit of Support

Negative factors include:

- Income below 125% of the FPL
- Diagnosed with a health condition that could require extensive care or interfere with ability to work
- Having less than a high school degree or equivalent
- Not proficient in English

New Forms

US Citizenship and Immigration Services (part of DHS) has created a new Form I-944, the Declaration of Self-Sufficiency

The State Department has created a new Form DS-5540, Public Charge Questionnaire

- ▶ The new forms are filed in addition to the person's application for a visa or Lawful Permanent Resident (LPR) Status

Form I-944

The I-944 requires applicants to provide extensive information and documentation, including:

- ▶ IRS transcripts of tax returns for everyone in the household
- ▶ 12 months of statements for bank/investment accounts
- ▶ Credit report and score, if available
- ▶ Evidence of health insurance, including type of coverage and terms
- ▶ Agency verification of public benefits received or applied for
- ▶ Transcripts, diplomas, certificates, licenses or other evidence of educational and employment qualifications

A photograph of a protest banner featuring a large American flag. A young boy is visible in the foreground, smiling and raising his hands. The banner is held by a group of people, and the background shows a crowd and other flags.

The latest on public charge and COVID-19

USCIS [announced](#) that immigrants can seek testing, treatment, and prevention of COVID-19 without fearing immigration consequences due to public charge. Read our [quick reference guide](#) on immigrant eligibility of federal public programs during the COVID-19 public health crisis.

Get Involved!

[JOIN THE PROTECTING IMMIGRANT FAMILIES CAMPAIGN OR MAILING LIST](#)

Sign on by Wednesday, April 15 COB ET

- ▶ Halt implementation of the DHS and State Department public charge regulations.
- ▶ Ensure access to COVID-19 testing and treatment for all.
- ▶ Ensure access to the stimulus rebates for everyone who files tax returns, whether they use a Social Security Number or an Individual Taxpayer Identification Number.
- ▶ Ensure access to nutrition assistance
- ▶ Ensure that health services, and information about COVID-19 and about how to access benefit programs is available in multiple languages and through trusted community providers
- ▶ Ensure adequate funding for Community Health Centers, which are essential providers in many immigrant and low-income communities.

The text of the letter is [here](#) . And the sign-on form is [here](#).

Safe Spaces: Health Care Facilities

Mayra Joachin,
Staff Attorney

Safe Spaces: Health Care Facilities

- ▶ Sensitive Locations
- ▶ Existing Protections
- ▶ Why they matter

Sensitive Locations

- ▶ Under long-standing policy, ICE cannot conduct most forms of enforcement activity at “sensitive locations” (or, “safe spaces”)
- ▶ **What counts as a “sensitive location”?** The term includes but is not limited to:
 - ▶ Schools (all levels, from preschool through college, as well as vocational and trade schools) and school bus stops
 - ▶ Hospitals and health care facilities
 - ▶ Places of worship
 - ▶ Religious or civil ceremonies (such as funerals or weddings)
 - ▶ Public demonstrations

Policy Number: 10029.2
FEA Number: 306-112-002b

Office of the Director


U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536



U.S. Immigration
and Customs
Enforcement

OCT 24 2011

MEMORANDUM FOR: Field Office Directors
Special Agents in Charge
Chief Counsel

FROM: John Morton 
Director

SUBJECT: Enforcement Actions at or Focused on Sensitive Locations

Purpose

This memorandum sets forth Immigration and Customs Enforcement (ICE) policy regarding certain enforcement actions by ICE officers and agents at or focused on sensitive locations. This policy is designed to ensure that these enforcement actions do not occur at nor are focused on sensitive locations such as schools and churches unless (a) exigent circumstances exist, (b) other law enforcement actions have led officers to a sensitive location as described in the “*Exceptions to the General Rule*” section of this policy memorandum, or (c) prior approval is obtained. This policy supersedes all prior agency policy on this subject.¹

Definitions

Sensitive Locations

Health care spaces deemed sensitive locations:

- ▶ Medical treatment and health care facilities, such as hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities;



Protections at Sensitive Locations

- ▶ **Subject to certain exceptions, DHS cannot engage in the following actions at sensitive locations:**

- ▶ Apprehend
- ▶ Arrest
- ▶ Interview
- ▶ Search
- ▶ Surveil

- ▶ **Exceptions:**

- ▶ When there is an imminent threat, related to national security or terrorism
- ▶ When there is a risk to public safety
- ▶ When enforcement action would prevent destruction of evidence related to an ongoing criminal investigation

Why they matter

- ▶ **Despite the country's current national emergency, ICE continues to conduct immigration enforcement actions.**

ICE Statement on COVID-19:

- ▶ As of 3/18/20, ICE adjusted its enforcement to focus on “public safety risks” and individuals subject to mandatory detention



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ICE Statement on COVID-19

“Consistent with its sensitive locations policy, during the COVID-19 crisis, ICE will not carry out enforcement operations at or near health care facilities, such as hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities, except in the most extraordinary of circumstances. **Individuals should not avoid seeking medical care because they fear civil immigration enforcement.**”

<https://www.ice.gov/news/releases/updated-ice-statement-covid-19#wcm-survey-target-id>



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State/local Actions



- ▶ **Issue** statements and disseminate resources re sensitive locations, or “safer spaces”.
- ▶ **Adopt** safe space policies at health care facilities.
- ▶ **Educate** advocates, service providers, and community members about the federal Sensitive Locations policies and their limitations.
- ▶ **Urge** ICE to refrain from conducting any enforcement at health care sites.
- ▶ **Build** or connect with local Know Your Rights coalitions.
- ▶ **Report** potential violations of the Sensitive Locations policies (see resources slide).

Resources

- ▶ Stay Informed!

- ▶ Follow NILC on Facebook, Twitter, and Instagram

- ▶ **Join the Protecting Immigrant Families list serve:** [Http://bit.ly/PIFActivemember](http://bit.ly/PIFActivemember)

- ▶ Unite to protect and defend access to health care, nutrition programs, public services and economic supports for immigrants and their families at the local, state and federal level.
 - ▶ Sign up to receive general campaign emails, join a workgroup, find out about action items you can take, and to receive the latest information and resources.

Resources

- ▶ COVID-19
 - ▶ COVID-19 Messaging Guide <https://www.nilc.org/wp-content/uploads/2020/04/NILC-COVID19-Messaging-Guide-2020-04.pdf>
 - ▶ USCIS Clarification that COVID-19 testing will not be considered during the public charge test, <https://www.uscis.gov/greencard/public-charge>
 - ▶ Understanding the Impact of Key Provisions of the COVID-19 Relief Bills on Immigrant Communities <https://www.nilc.org/issues/economic-support/impact-of-covid19-relief-bills-on-immigrant-communities/>
 - ▶ Quick Guide: Immigrant Eligibility for Public Programs During COVID-19 <https://protectingimmigrantfamilies.org/immigrant-eligibility-for-public-programs-during-covid-19/>
- ▶ Public Charge
 - ▶ Public Charge Update: What Advocates Need to Know Now <https://www.nilc.org/issues/economic-support/pubcharge/public-charge-update-what-advocates-need-to-know-now/>
 - ▶ Changes to Public Charge: Analysis and Frequently Asked Questions <https://www.nilc.org/issues/economic-support/pubcharge/changes-to-public-charge-analysis-and-faq/>

Resources

▶ Sensitive Locations

- ▶ Protecting Immigrant Families “Sensitive Locations Policies” Fact-Sheet, https://www.clasp.org/sites/default/files/publications/2018/06/2018_sensitivelocationsdetailed.pdf.
- ▶ ICE Statement on COVID-19 re Sensitive Locations, <https://www.ice.gov/news/releases/updated-ice-statement-covid-19#wcm-survey-target-id>
- ▶ ICE FAQ on Sensitive Locations, <https://www.ice.gov/ero/enforcement/sensitive-loc>
- ▶ For tips on reporting Sensitive Locations violations, <https://www.nilc.org/wp-content/uploads/2019/01/CRCL-complaint-for-school-sensitive-locations-violations-2019.pdf>, or contact us at SafeSpacesAlerts@nilc.org.

▶ Safe Spaces

- ▶ NILC Safe Spaces toolkit, <https://healthtoolkit.nilc.org/register/>
- ▶ General KYR resources, <https://www.nilc.org/issues/immigration-enforcement/everyone-has-certain-basic-rights/>

Questions?

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Upcoming COVID-19 Webinars

Workers' Rights: Critical Labor Protections for Immigrant Workers During the COVID-19 Pandemic

Wednesday, April 15 (10:30 AM-12:00 PM PST)

Equal Opportunities to Thrive: Rebates, Taxes/SSN/ITIN, Food Security, and Access to Food Programs

Thursday, April 16 (10-11:30 AM PST)
