



## Alert

On Nov. 2, 2020, the U.S. District Court for the Northern District of Illinois vacated the Inadmissibility on Public Charge Grounds final rule, 84 Fed. Reg. 41,292 (Aug. 14, 2019), as amended by Inadmissibility on Public Charge Grounds; Correction, 84 Fed. Reg. 52,357 (Oct. 2, 2019) (“Public Charge Final Rule”) nationwide. That decision was stayed by the U.S. Court of Appeals for the Seventh Circuit. On Mar. 9, 2021, the Seventh Circuit lifted its stay and the U.S. District Court for the Northern District of Illinois’ order vacating the Public Charge Final Rule went into effect.

USCIS immediately stopped applying the Public Charge Final Rule to all pending applications and petitions that would have been subject to the rule. USCIS continues to apply the public charge inadmissibility statute, including consideration of the statutory minimum factors in the totality of the circumstances, in accordance with the 1999 [Interim Field Guidance](#) that was in place before the Public Charge Final Rule was implemented on Feb. 24, 2020, to the adjudication of any application for adjustment of status. In addition, USCIS will no longer apply the separate, but related, “public benefits condition” to applications or petitions for extension of nonimmigrant stay and change of nonimmigrant status.

On or after Mar. 9, 2021, applicants and petitioners should not provide information required solely by the Public Charge Final Rule. That means that applicants for adjustment of status should not provide the Form I-944, Declaration of Self-Sufficiency, or any evidence or documentation required on that form with their Form I-485. Applicants and petitioners for extension of nonimmigrant stay and change of nonimmigrant status should not provide information related to the receipt of public benefits on Form I-129 (Part 6), Form I-129CW (Part 6), Form I-539 (Part 5), and Form I-539A (Part 3).

If an applicant or petitioner has already provided such information, and USCIS adjudicates the application or petition on or after Mar. 9, 2021, USCIS will not consider any information provided that relates solely to the Public Charge Final Rule, including, for example, information provided on the Form I-944, evidence or documentation submitted with Form I-944, or information on the receipt of public benefits on Form I-129 (Part 6), Form I-129CW (Part 6), Form I-539 (Part 5), and Form I-539A (Part 3).

If you received a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) requesting information that is solely required by the Public Charge Final Rule, including but not limited to Form I-944, and your response is due on or after Mar. 9, 2021, you need not provide the information solely required by the Public Charge Final Rule. You do, however, need to respond to the aspects of the RFE or NOID that otherwise pertain to the eligibility for the immigration benefit sought. If USCIS requires additional information or evidence to make a public charge inadmissibility determination under the statute and consistent with the 1999 [Interim Field Guidance](#), it will issue a subsequent RFE or NOID. or information about the relevant court decisions, please see the [litigation summary](#).

USCIS will issue additional guidance regarding the use of affected forms. In the interim, USCIS will not reject any Form I-485 on the basis of the inclusion or exclusion of Form I-944, and will not reject Form I-129, Form I-129CW, Form I-539, or Form I-539A based on whether the public benefits questions (Form I-129 (Part 6), Form I-129CW (Part 6), Form I-539 (Part 5), and Form I-539A (Part 3) have been completed or left blank.



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## Chapter 7 - Health

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### **i** Alert

On Sept. 11, 2020, the U.S. Court of Appeals for the Second Circuit issued a decision that allows DHS to resume implementing the [Public Charge Ground of Inadmissibility final rule](#) nationwide, including in New York, Connecticut and Vermont. The decision stays the July 29, 2020, [injunction](#), issued during the coronavirus (COVID-19) pandemic, that prevented DHS from enforcing the public charge final rule during a national health emergency.

Therefore, we will apply the public charge final rule and [related guidance](#) in the USCIS Policy Manual, Volumes [2](#), [8](#) and [12](#), to all applications and petitions postmarked (or submitted electronically) on or after Feb. 24, 2020. If you send your application or petition by commercial courier (for example, UPS, FedEx, or DHL), we will use the date on the courier receipt as the postmark date.

For information about the relevant court decisions, please see the public charge injunction [webpage](#).

Officers must consider an applicant's health when determining whether an alien is more likely than not to become a public charge at any time in the future.<sup>[1]</sup> The applicant's health may adversely affect an applicant's ability and capacity to obtain and retain employment and adequate health care necessary for self-sufficiency.<sup>[2]</sup>

### A. Standard

The officer assesses whether the applicant's health makes him or her more or less likely to become a public charge at any time in the future.

When making this assessment, the officer evaluates the medical evidence provided in the Report of Medical Examination and Vaccination Record ([Form I-693](#)) completed by a civil surgeon, the medical examination report in the U.S. Department of State (DOS) Form DS-2054 or Form DS-7794 completed by a panel physician, or any other information provided by a licensed medical professional. USCIS generally defers to the report from the civil surgeon or panel physician, absent evidence that such report is incomplete.<sup>[3]</sup> The officer may also consider any additional documentation provided by the applicant relevant to the applicant's health and any medical conditions.<sup>[4]</sup> In general, the absence of major health problems is a positive factor.

Civil surgeons<sup>[5]</sup> and panel physicians<sup>[6]</sup> are directed in the regulations governing the medical examination to determine whether the applicant has a Class A or Class B medical condition.<sup>[7]</sup> Class A conditions generally render an alien inadmissible on the health-related grounds of inadmissibility.<sup>[8]</sup>

Class B conditions generally do not render an alien inadmissible on health-related grounds of inadmissibility, but may be considered for other grounds of inadmissibility, including public charge.<sup>[9]</sup> Class B conditions are those that represent a departure from normal health or well-being that is significant enough to possibly interfere with the person's ability to provide and care for him or herself, to attend school, or to work, or that may require extensive medical treatment or institutionalization in the future.<sup>[10]</sup>

Civil surgeons and panel physicians should ordinarily provide an explanation of a medical condition, whether Class A or Class B, that details the nature and the extent of the medical condition or the abnormality, the degree to which the alien is incapable of normal physical activity, and the extent to which the condition is remediable.<sup>[11]</sup> The explanation should also include the likelihood that, because of the condition, the applicant will require extensive medical care or institutionalization or that it may interfere with the person's ability to provide and care for him or herself, to attend school, or to work.<sup>[12]</sup>

An officer must not attempt to diagnose or determine whether an applicant has a certain medical condition; these decisions must be made by a panel physician or civil surgeon. Further, officers must not make medical determinations as to whether the medical condition will require extensive medical care or institutionalization, or that it may interfere with the person's ability to provide and care for him or herself, to attend school, or to work.

All determinations as to the applicant's health must be based on the Form I-693, Form DS-2054, or Form DS-7794, or other medical or additional documentation prepared by a physician or licensed medical professional submitted by the applicant. An officer may issue a Request for Evidence (RFE) if he or she has questions about the applicant's medical condition or its effect on the applicant's ability to provide and care for him or herself, to attend school, or to work.

When assessing how the applicant's health affects his or her likelihood of becoming a public charge at any time in the future, the officer should consider all factors relevant to the applicant's case based on the medical reports and other documentation submitted by the applicant including, but not limited to:

- Whether the applicant is in good health;
- Whether the applicant has been diagnosed with a physical or mental medical condition;
- The nature and severity of the condition(s);

- Whether the medical condition is likely to require extensive medical treatment or institutionalization in the future;
- Whether the condition affects the applicant’s capability for normal physical activity and ability to complete daily tasks;
- Whether the medical condition will interfere with the applicant's ability to provide and care for him or herself, to attend school, or to work; and
- Any information relating to the prognosis of the applicant, including information on past or current medication, prospect of recovery, or extent to which a condition is progressively detrimental to the applicant’s health and mental state.

Officers must rely on the medical information, prepared by a panel physician, civil surgeon or other qualified medical professional, in making these determinations. Officers must not speculate as to the cost of medical conditions or future diagnoses.

Having a Class A or Class B condition that is likely to require extensive medical treatment or institutionalization, or that will interfere with the alien’s ability to provide and care for him or herself, to attend school, or to work upon a grant of adjustment of status is considered a negative factor in the totality of the circumstances. The absence of a Class A or B condition that likely to require extensive medical treatment or institutionalization or that will interfere with the alien’s ability to provide and care for him or herself, to attend school, or to work is a positive factor in the totality of the circumstances.

The applicant’s health alone or the mere presence of a medical condition that is likely to require extensive medical treatment or institutionalization, or that will interfere with the applicant’s ability to provide and care for him or herself, to attend school, or to work, alone, is not outcome determinative. This includes a diagnosis by a medical professional, including a civil surgeon or panel physician, that an applicant has a disability. Although such a diagnosis is a negative factor if it prevents the alien from working, going to school, or otherwise providing or caring for him or herself, as with any other negative factor, a disability that impacts the applicant’s ability to provide and care for him or herself, to attend school, or to work must not be the sole basis for an inadmissibility determination.

The officer must always assess inadmissibility on the public charge ground in the totality of the circumstances.

## B. Summary of Health

### Applicant's Health

Positive Factor	Negative Factor
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Positive Factor	Negative Factor
No diagnosed medical issues	Form I-693 (DOS medical examination report or any other medical documentation) lists a Class A medical condition <sup>[13]</sup> or a Class B medical condition <sup>[14]</sup> that the civil surgeon, panel physician, or other medical professional indicates is significant enough to interfere with the applicant's ability to provide and care for him or herself, to attend school, or to work, or that is likely to require extensive medical treatment or institutionalization in the future.

## C. Evidence

### 1. Immigration Medical Examination Reports

The officer must consider the applicant's Report of Medical Examination and Vaccination Record (Form I-693) or the applicable DOS medical examination report (Form DS-2054, or Form DS-7794) submitted in connection with a visa application, or any other medical documentation submitted by the applicant. For purposes of the public charge ground of inadmissibility, an officer should generally defer to the immigration medical examination of a civil surgeon or panel physician, unless there is evidence in the record that the report is incomplete or there are other concerns affecting the quality or integrity of the report.

If the report is incomplete or if the officer has additional questions, the officer should address the deficiency in accordance with current guidance on the issuance of RFEs and Notices of Intent to Deny (NOIDs).<sup>[15]</sup>

When addressing the deficiency through an RFE or a NOID, the officer should include language directing the civil surgeon to address the medical condition and diagnosis, as well as the possible effects on the applicant's ability to provide and care for him or herself, to attend school, or to work, or whether the condition requires any extensive medical treatment or institutionalization in the future so that the officer has sufficient information to make a public charge determination.

### 2. Additional Documentation

The applicant may submit, and USCIS may consider, any additional medical records, medical or mental health documentation, evaluations by licensed medical professionals, or other related documentation regarding or related to the applicant's health and condition.<sup>[16]</sup> This documentation may include information on how the applicant's health makes him or her more or less likely to become a public charge at any time in the future, or a clarification about a medical condition diagnosed as part of the applicant's medical examination, or other information.<sup>[17]</sup>

#### *Example*

An applicant seeking adjustment of status submits a Form I-693 that reveals that he or she has severe emphysema, a Class B condition. The civil surgeon indicated that this chronic condition would continue to

require medical treatment and might interfere with the applicant's ability to work. However, the applicant provides additional documentation with his or her adjustment application demonstrating that he or she works in an occupation that is not physically demanding, and where his or her medical condition would not interfere with his or her ability to work.

The applicant also provides evidence from his or her employer documenting his or her gainful employment. Finally, the applicant provides medical documentation from the treating physician documenting the current treatment for the condition and that it does not interfere with his or her ability to work.

Absent other negative factors, an officer may conclude, based on these documents, and considered in the totality of the circumstances, that the applicant is not likely at any time to become a public charge in the future. Although the applicant has a medical condition that the civil surgeon indicated might affect his or her ability to work (a negative factor), the applicant has established through current employment and additional evidence that she is in fact working without issue, in the present and foreseeable future (a positive factor outweighing the negative factor).<sup>[18]</sup>

## Footnotes

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<sup>[^1]</sup> See [INA 212\(a\)\(4\)](#). See [8 CFR 212.22\(b\)\(2\)](#).

<sup>[^2]</sup> Also, the Board of Immigration Appeals (BIA), the Attorney General, and legacy Immigration and Naturalization Service (INS) have considered a physical and mental condition to be of major significance to the public charge determination, generally in relation to the ability to earn a living. See, for example, [Matter of Martinez-Lopez \(PDF\)](#), 10 I&N Dec. 409, 421–23 (A.G. 1964). See [Matter of A- \(PDF\)](#), 19 I&N Dec. 867, 869 (Comm. 1988) (citing [Matter of Harutunian \(PDF\)](#), 14 I&N Dec. 583 (Reg. Comm. 1974). See [Matter of Vindman \(PDF\)](#), 16 I&N Dec. 131 (Reg. Comm. 1977). See [83 FR 51114, 51181-84 \(PDF\)](#) (Oct. 10, 2018) (proposed rule).

<sup>[^3]</sup> See [8 CFR 212.22\(b\)\(2\)\(ii\)](#).

<sup>[^4]</sup> See [8 CFR 212.22\(b\)\(2\)\(ii\)](#).

<sup>[^5]</sup> Civil surgeons are USCIS-designated physicians who conduct the immigration medical examination of aliens present in the United States and seeking an immigration benefit in the United States, such as adjustment of status. The civil surgeon must complete the [Form I-693](#) according to the U.S. Department of Health and Human Services (HHS) Centers for Disease Control and Prevention (CDC)'s regulations and Technical Instructions for the Medical Examination of Aliens (TIs) applicable to civil surgeons. For more information on civil surgeons and health-related grounds of inadmissibility, see Part B, Health-Related Grounds of Inadmissibility [[8 USCIS-PM B](#)] and Part C, Civil Surgeon Designation and Revocation [[8 USCIS-PM C](#)].

<sup>[^6]</sup> Panel physicians are DOS-designated physicians who conduct the immigration medical examinations of aliens who are abroad and seeking an immigration benefit with DOS. The panel physician must complete the DOS medical examination form according to CDC's regulations and TIs applicable to panel physicians.

<sup>[^7]</sup> For more information, see Part B, Health-Related Grounds of Inadmissibility [[8 USCIS-PM B](#)].

[^8] See [INA 212\(a\)\(1\)](#). See [42 CFR 34.2\(c\)](#).

[^9] See [42 CFR 34.2\(e\)](#).

^10 See [42 CFR 34.2\(d\)](#). See CDC, [Required Evaluations - Other Physical or Mental Abnormality, Disease, or Disability, Technical Instructions For Medical Examination Of Aliens](#). See Report of Medical Examination and Vaccination Record ([Form I-693](#)).

[^11] See [42 CFR 34.3](#). See [42 CFR 34.4](#).

[^12] See [42 CFR 34.4\(b\)\(2\)](#) (Class A). See [42 CFR 34.4\(c\)\(2\)](#) (Class B).

[^13] See [42 CFR 34.2\(d\)](#).

[^14] See [42 CFR 34.2\(e\)](#).

[^15] For more information on addressing deficiencies or conflicting information on [Form I-693](#), see Part B, Health-Related Grounds of Inadmissibility, Chapter 5, Review of Overall Findings [\[8 USCIS-PM B.5\]](#).

[^16] See [8 CFR 212.22\(b\)\(2\)\(ii\)](#).

[^17] If the [Form I-693](#) reveals a Class A medical condition, and the additional documentation shows that the medical condition has since been cured but is not annotated on the medical examination report, the officer may ask the applicant to obtain an updated Form I-693. Without an updated Form I-693, the officer would have to find the applicant inadmissible on health related grounds. While the additional medical documentation may be used for the public charge inadmissibility determination, an officer must rely on the information contained in the Form I-693 for purposes of an inadmissibility determination based on health-related grounds of inadmissibility. See Part B, Health-Related Ground of Inadmissibility [\[8 USCIS-PM B\]](#).

[^18] For purposes of finding an applicant inadmissible on health-related grounds, the USCIS officer must only consider the information contained in the panel physician's or civil surgeon's immigration medical examination report. For purposes of the public charge determination, USCIS generally defers to the report, but the officer may consider additional medical documentation. For more information on health-related grounds of inadmissibility, see Part B, Health-Related Ground of Inadmissibility [\[8 USCIS-PM B\]](#).

Current as of February 10, 2021

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