



The Impact of Current U.S. Immigration Policies on Individuals with Disabilities and Their Families

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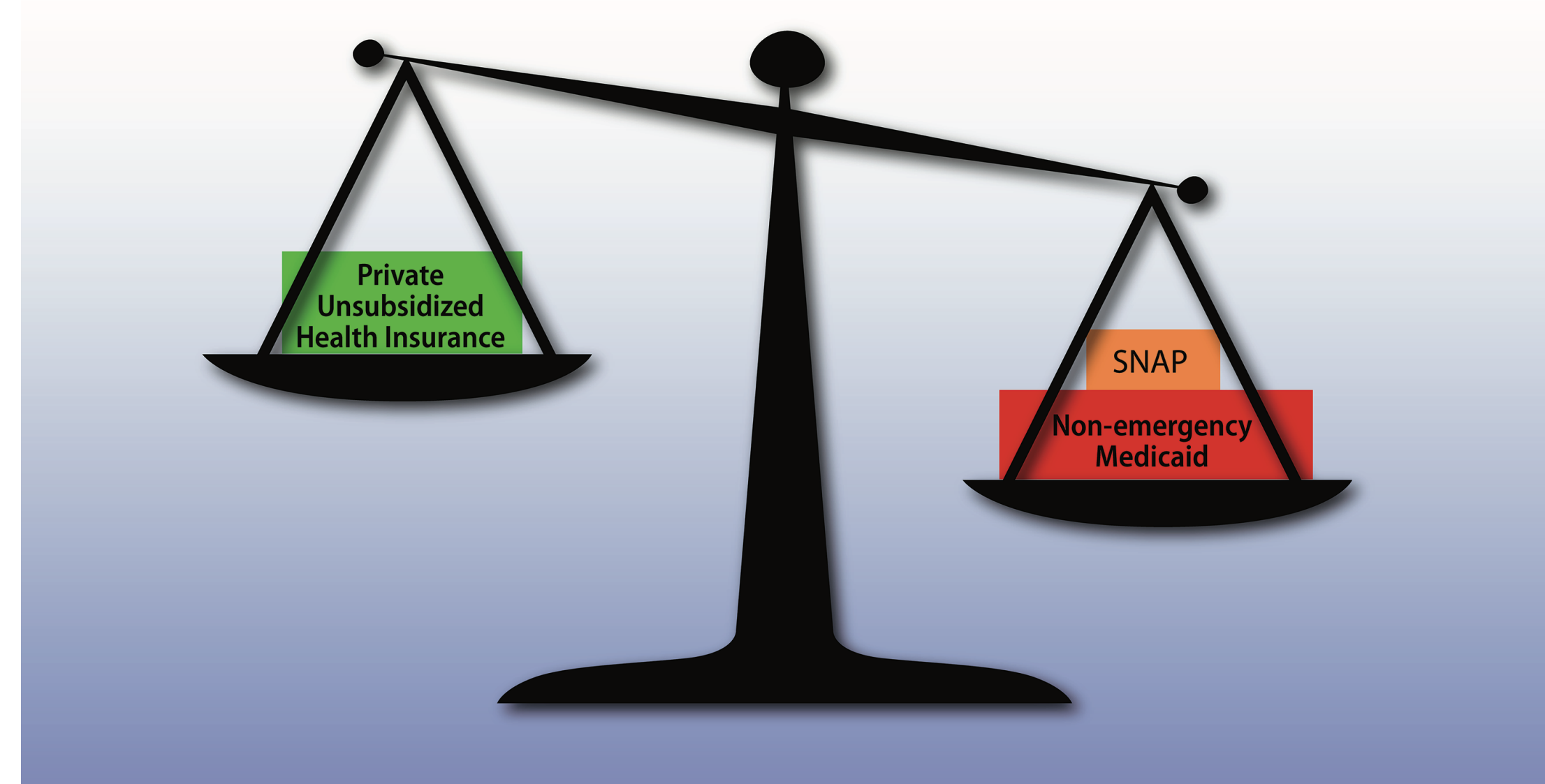
What is the Public Charge rule?

The Public Charge rule expands the definition U.S. immigration officials use to determine who is a “public charge.” U.S. officials look at a “totality of circumstances” to project whether a person will receive “one or more public benefit for more than 12 months in the aggregate within any 36-month period.”(1) Implemented on Feb. 24, 2020, the rule can be used to deny admission to the U.S., or application for a green card, to individuals who have used, or may likely apply for, non-emergency Medicaid, Medicare Part D Low Income Subsidy, housing assistance, and food assistance (SNAP).

As Medicaid is the primary provider of community services and supports to help individuals with disabilities to live and work in community, the rule negatively impacts individuals with disabilities and their families.

Some Factors in the Totality of Circumstances Test

Heavily Weighed Positive Factor Heavily Weighed Negative Factor



“Assigning a heavy negative weight to applicants with disabilities [who seek to enter the U.S. or to become U.S. citizens] will codify discriminatory assumptions and perpetuate a negative view of the abilities of all people with disabilities.”(2) –letter from Neil Romano, Chairman of the National Council on Disability, to the Dept. of Homeland Security, Dec. 10, 2018

Status as of April 23, 2020: Court cases have been filed in 21 states and the District of Columbia to contest the rule. It’s still in litigation. Testing and treatment of COVID-19, even if paid for by Medicaid, will not count against green card applicants, but they must document any need for food and housing assistance related to the pandemic.

Impacts:

1. Toxic stress: Confusion about who will be impacted by the rule and anti-immigrant rhetoric has sown fear.
2. “Chilling effect”: People opt out of programs they legally qualify for out of concern for their ability to stay in the U.S. and get a green card.(3)
3. Risk of exacerbating direct support professional (DSP) workforce crisis. DSPs help individuals with personal care, transportation, housekeeping, and dressing. About ¼ of DSPs are immigrants who may leave these low-paid jobs to avoid the need for public benefits, thus impacting the ability of individuals with disabilities to remain in their homes.(4)

References:

- (1) National Archives (2019, August 14). Homeland Security Inadmissibility on Public Charge Grounds. *Federal Register*. Retrieved from <https://www.govinfo.gov/content/pkg/FR-2019-08-14/pdf/2019-17142.pdf>
- (2) Romano, N. (2018, December 10). NCD letter to DHS regarding inadmissibility on public charge proposed rule. *National Council on Disability*. Retrieved from <https://www.ncd.gov/publications/2018/ncd-letter-dhs-regarding-inadmissibility-public-charge-proposed-rule>
- (3) Immigrant Legal Advocacy Project (2020, January 31). Advocates deeply concerned about ‘Public Charge’ rule impact in Maine following Supreme Court decision. *ILAP Maine*. Retrieved from <https://static1.squarespace.com/static/5af48320e74940b55a6583bb/t/5e34549f95862d328a8113ce/1580487840277/Press+Release+++MEJ+ILAP+MIRC+Public+Charge+013120.pdf>
- (4) Parfaite-Claude, D. (2018, December 17). ANCOR issues comments on proposed public charge rule. *ANCOR*. Retrieved from https://cqcengage.com/ancor/file/beycU2FWFLy/ANCOR_Public_Charge_December_10_2018.pdf

The Public Charge rule and the Remain in Mexico policy negatively impact individuals with disabilities and make it harder for legal immigration to the U.S. for low- and middle-income people. The Public Charge rule does not affect asylum seekers, but the Remain in Mexico policy results in a loss of protections for this population.



What is “Remain in Mexico”?

Implemented on January 28, 2019, “Remain in Mexico,” officially known as the Migrant Protection Protocols (MPP), forces asylum seekers who arrive at a port of entry on the U.S. southern border to be sent back to Mexico to await their asylum proceedings. This includes children with disabilities, pregnant women, and LGBTQ+ individuals. With hearings perhaps months or a year away, asylum seekers wait in Mexican border cities that are too unsafe for U.S. travelers to visit, according to the U.S. State Department.(5)

1000+ public reports of rape, kidnapping, torture, and other violent crimes against asylum seekers returned under MPP, as of Feb. 28, 2020.(6)

According to MPP, “[I]ndividuals from vulnerable populations may be excluded on a case-by-case basis” from the policy,(7) yet U.S. border agents have continued to force those with disabilities and other vulnerable individuals back to Mexico. The asylum seekers are largely in tents and overcrowded shelters without access to safe social distancing to protect against transmission of COVID-19. Most asylum claims under MPP are denied.



Photo. Open-air encampment of asylum seekers awaiting hearings, Matamoros, Mexico. ©Mellisa Pratcht, 2019, *Doctors without Borders*

Status as of April 23, 2020: On Feb. 28, 2020, a three-judge panel of the Ninth U.S. Circuit of Appeals temporarily halted MPP for those awaiting hearings in California and Arizona. The U.S. Supreme Court has been asked to consider the case. On March 20, 2020, the Trump Administration closed the southern border to asylum seekers.

Impacts:

1. Individuals fleeing violence and seeking protections in the U.S. are denied an effective opportunity to seek asylum. They are returned to areas where they are at risk of great harm, which the A.C.L.U. argues is in violation of the doctrine of non-refoulement. This doctrine “prohibits any government from knowingly sending a refugee to a place where she will likely be persecuted.”(8)
2. Public health measures work only when they include everyone. Asylum seekers, including those with disabilities, are being left out, undermining other novel coronavirus containment measures.
2. In Mexican border cities, asylum seekers with disabilities and chronic health conditions lack accessible bathrooms, transportation, or food that meets their special dietary needs. Due process protections are not guaranteed.(9)

- (5) OSAC, U.S. State Department (2019). Mexico 2019 crime & safety report: Matamoros. *OSAC*. Retrieved from <https://www.osac.gov/Content/Report/03b73ba8-0cd3-4772-bc97-15f4aebfc985>
- (6) Human Rights First (2020, March) Disinformation and spin: Trump Administration deploys troops to border, paints asylum seekers and attorneys as threat. *Human Rights First*. Retrieved from <https://www.humanrightsfirst.org/sites/default/files/DisinformationandSpinMar2020.pdf>
- (7) U.S. Department of Homeland Security (2019, January 24). Migrant Protection Protocols. *U.S. DHS*. Retrieved from <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols#>
- (8) Blitzer, J. (2019, October 1). How the U.S. asylum system is keeping migrants at risk in Mexico. *The New Yorker*. Retrieved from <https://www.newyorker.com/news/dispatch/how-the-us-asylum-system-is-keeping-migrants-at-risk-in-mexico>
- (9) Ríos Espinosa, C. (2019, October 29). Mexico: risks at border for those with disabilities. *Human Rights Watch*. Retrieved from <https://www.hrw.org/news/2019/10/29/mexico-risks-border-those-disabilities#>