



Understanding the New Public Charge Standard That Puts Weight on Trial

By Anne Rowley, Counsel

In November 2025, an unofficially released Department of State cable provided new, detailed instructions directing consular officers on how to apply the public charge ground of inadmissibility. While this statute has been part of U.S. immigration law, in some shape or form, for more than a century, the new cable underscores a renewed emphasis on evaluating immigrant and nonimmigrant visa applicants' likelihood of relying on public assistance or long-term government-funded institutional care after entering the United States.

The Problem of Disparate Impact

One of the most significant aspects of the new guidance is its explicit integration of obesity as a negative health factor to be weighed in the applicant's "totality of the circumstances" assessment. This policy risks cementing clear class and race disparities that undermine fundamental principles of fairness.

Statistically, health and economic outcomes are deeply intertwined. Applicants who have restricted access to nutritious food, safe environments for exercise, and, crucially, specialized obesity care (which is often expensive and not covered by insurance) are far more likely to present with conditions that immigration officials may flag as a health factor likely to require future government support, even if the individual is otherwise financially self-sufficient. This creates an inherently unfair multi-tiered system: affluent applicants with the same medical conditions can more likely mitigate this negative factor since they can afford expensive private treatments, while lower-income applicants, including individuals from disadvantaged backgrounds, are penalized for health disparities that are, in large part, determined by lack of resources and access to care, factors often wholly outside their realm of control.



What is the Public Charge Ground of Inadmissibility?

The public charge ground of inadmissibility under INA § 212(a)(4) is a long-standing component of U.S. immigration law that can prevent certain non-citizens from being issued a visa, granted admission to the United States, or adjusting their status to lawful permanent residence. Under current DHS regulations and longstanding policy dating back to the late 1990s, other than during a brief period during the first Trump Administration, the statute has been interpreted in a manner that aims to identify individuals who are likely to become primarily dependent on the government for subsistence, as demonstrated by the receipt of specific public cash benefits for income maintenance or long-term institutionalization at government expense. This determination requires immigration officials to assess the non-citizen's "totality of the circumstances," which includes mandatory factors like age, health, family status, assets, resources, financial status, education, and skills.

A Renewed Focus on “Public Health” Conditions

One of the most significant aspects of the new guidance is its expanded discussion of health-related factors. Consular officers must consider **Class B medical conditions**, which are health issues that may be significant but are not severe enough to make an applicant inadmissible on health-related grounds; they do not bar entry but require the panel physician conducting the medical exam to document the diagnosis and provide remarks about the expected degree of disability, the likelihood of needing ongoing medical treatment, and whether the condition could interfere with the applicant's ability to support themselves. In addition to Class B conditions identified in the immigration medical exam, consular officers must also consider a broader set of chronic health issues that could potentially limit an applicant's ability to work or require costly long-term care.

Now, the November 2025 guidance will effectively broaden the scope of “health” considerations beyond what the regulations explicitly specify, requiring consular officers to evaluate conditions, including obesity, that fall outside the traditional structure for assessing the likelihood of someone becoming a public charge. Even an officer who is acting in good faith and trying to apply the rules fairly will inevitably incorporate personal assumptions about medical risk, work capacity, or long-term costs in deciding whether an individual is likely to become a public charge. Some of those assumptions may be informed by accurate information, but others may reflect unconscious biases or incomplete understanding. Consular officers, after all, are not medical professionals; nor



are they public benefits experts, and eligibility requirements for benefits are extremely complex and can vary dramatically from state-to-state and over time.

The practical takeaway for applicants is that consular officers are now directed to assess whether an individual with obesity has the financial resources, insurance coverage, employment prospects, and long-term plans necessary to maintain health care without relying on public cash assistance or institutional care throughout their entire expected period of stay in the United States. There is no "bright-line rule." Instead, and as discussed above, officers must consider obesity in the totality of circumstances, alongside age, income, family responsibilities, and other factors.

By placing officers in the position of making these subjective medical and socioeconomic predictions, the guidance shifts adjudication away from clear, rule-based standards, and toward open-ended discretion that significantly increases the risk of arbitrary or capricious decision-making. Nearly any chronic condition could be interpreted differently from officer to officer, producing inconsistent and potentially unfair outcomes for applicants who have no meaningful ability to challenge those judgments.

Where Obesity Fits In

The cable explicitly instructs officers to consider obesity as a relevant health factor, even if it is not classified as a formal medical condition in the exam. The cable asserts that, according to the Centers for Disease Control and Prevention (CDC), obesity increases risks for high blood pressure, Type 2 diabetes, sleep apnea, joint disorders, gallbladder disease, and certain mental health conditions, many of which can require ongoing, expensive treatment. However, increased risk **does not equate to a likelihood of** future illness that will produce dependence on government benefits in the United States, and many (if not most) individuals who have maintained employment and financial self-sufficiency will continue to do so regardless of fluctuations in body weight. Requiring a consular officer to extrapolate this general health data into a prediction that a specific, financially qualified applicant is *likely* to become a public charge, without any specific input from medical experts, introduces an inherently problematic level of subjectivity and uninformed speculation into the adjudication process.



How This Impacts Applicants

Individuals with chronic health conditions, including obesity, must now be prepared more thoroughly for consular interviews. This can include:

- Documenting private insurance coverage or employer-provided plans;
- Demonstrating stable financial resources and assets;
- Showing long-term financial planning for potential medical needs; and
- Providing evidence of a realistic employment plan in the United States.

For immigrant visa applicants, a sufficient Affidavit of Support, where one is required, remains an important factor. For nonimmigrant applicants, officers will reassess the public charge ground each time the applicant seeks a visa. With the new DOS guidance, applicants must also understand that their weight profile may have been integrated as a negative health factor, warranting attention alongside their financial stability. This means that even where all other financial and family factors are deemed to be favorable from a public charge perspective, the presence of obesity could affect the consular officer's overall assessment of visa eligibility.

Who We Choose to Welcome and Why It Matters

While the bulk of this piece has focused on the new public charge rule, it is worth taking a step back to see why this matters in the larger scheme. The standards we set for admission are not just technical criteria; they are supposed to reflect our national priorities and vision for the country's future. At its core, our immigration system should reflect a national vision of who we want joining and strengthening our communities. The United States has long benefited from admitting individuals whose skills, determination, and ingenuity help drive cultural diversity, economic growth, and uphold the democratic values on which the country was founded. Policies that rely heavily on subjective markers such as socioeconomic class or bodyweight distract from this core purpose and risk excluding precisely the people who have historically powered American innovation: hardworking individuals who rise through challenge, contribute meaningfully, and bring perspectives shaped by diverse cultures and life experiences. A forward-looking admissions framework should ideally welcome those who embody commitment, talent, and resilience, not penalize those whose circumstances differ from arbitrary or class-skewed norms, so that America may continue to be enriched by the very diversity and brilliance that have always defined it.



Conclusion

The integration of obesity demonstrates a clear attempt to tip the public charge scale against certain applicants by leveraging subjective health factors. When the rules change to incorporate criteria not explicitly defined by regulation and the risk of an arbitrary decision increases as a result, effective preparation is an applicant's most powerful tool. While the rules imposed by the Department of State are outside the realm of an applicant's control, it is still possible for applicants to control their responses to and interactions with these impositions. To ensure optimal positioning in requesting a visa, it is more critical now than ever to engage counsel, meticulously document self-sufficiency, and anticipate concerns that might arise from this new type of scrutiny. Teaming up with legal experts from GYH and staying informed is the best defense to make certain that all factors, including your health and financial status, are accurately and compellingly presented. With the right preparation, applicants can ensure they are best poised to bear the weight of this new scrutiny and for success at their consular appointment.

**Disclaimer: This information is presented for the purposes of general education and does not constitute legal advice.*

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