

# Legal Lens

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## THE PUBLIC CHARGE RULE'S IMPACT ON PUBLIC HEALTH

Towards the beginning of August, the Trump Administration expanded the decision-making process involved in granting green cards, also known as permanent legal status, to legal immigrants currently in the U.S. This expansion is based on a more aggressive wealth test of immigrants to determine whether they retain the means to support themselves, or whether they are likely to use government benefit programs such as food stamps, subsidized housing, and Medicaid. In essence, poorer immigrants that are deemed likely to require public assistance will be denied a green card, while wealthier immigrants, who are less likely to need assistance, will be granted a green card. This tool designed to narrow the demographic of immigrants permanently allowed in the U.S. is part of a new regulation called "The Public Charge Rule." Financial status has long been a consideration of immigration officials, but this rule makes assessing finances a more essential part of the decision-making process. Officials

have also claimed this rule will not apply to those already with green cards, certain members of the military, refugees and asylum-seekers, or to pregnant women and children, but this does not account for the confusion created among the immigrant communities. Immigrants may drop out of needed programs for fear that using them may impact their immigration status or the status of a relative. Examples of these programs include housing, forgoing critical lifesaving health care or preventative care, or refusing to seek supplemental nutrition such as the program for women, infants and children (WIC). The Department of Homeland Security estimated that more than 382,000 immigrants seek adjustment to their immigration status every year, making them subject to the Public Charge Rule. Further, when considering the 26 million immigrants living in the U.S. legally who may reconsider their use of public assistance, the public health implications may make for a humanitarian impact to be felt for decades.

Michael D. Shear & Eileen Sullivan, *The New York Times*, Aug. 12, 2019  
<https://www.nytimes.com/2019/08/12/us/politics/trump-immigration-policy.html>

## HEALTH PLAN'S CADILLAC TAX MAY FINALLY BE RUNNING OUT OF GAS

The Cadillac Tax, a 40% tax on employer-provided health insurance plans that cost more than \$11,200 for an individual policy and \$30,150 for family coverage, is one of the most

controversial parts of the Affordable Care Act. Although the tax has been controversial since 2010, those supporting the ACA vouched that it was necessary to help pay for the cost of the law and prevent use towards care that could be deemed unnecessary. Now, the issue is not how much the nation is willing to spend on health care, rather it is the amount individuals actually are spending. Stan Dorn, a senior fellow at Families USA, stated, "Nowadays, few observers would argue that [employer-sponsored insurance] gives most workers and their families excessive coverage." In his written statement, Dorn was advocating that although backers of the ACA thought the tax was necessary for those concerned about the price of health care, the increasing use of high-deductible plans, amongst other transitions, make the ACA backers' argument less persuasive. Many economists from one ideological spectrum have supported its inclusion in the ACA, and many still endorse it. This contested debate amongst politicians over this issue will make it harder for a consensus on the issue to be formulated.

Julie Rovner, *KHN*, Aug. 16, 2019  
<https://khn.org/news/health-plans-cadillac-tax-may-finally-be-running-out-of-gas/>

### **NYC'S MEASLES OUTBREAK IS FINALLY OVER**

The largest measles outbreak in the country in 27 years, representing a huge setback for public health, was officially declared over in New York City in early September. Although no new cases had been reported since mid-July, a measles outbreak is typically only declared over following two incubation periods. The efforts necessary to stop this highly contagious and potentially life-threatening disease cost the city

over \$6 million and required the deployment of more than 500 staff and the issuance of a mandatory vaccination order for people living or working in four neighborhoods of Brooklyn — where 72% of the cases occurred. The outbreak was mainly concentrated in the ultra-Orthodox Jewish community due to misinformation that spread about the safety and effectiveness of the measles, mumps and rubella (MMR) vaccine. The total infected were 654 people with 52 requiring hospitalization, 16 were placed in intensive care. Of those infected, 73% were unvaccinated, 7% were incompletely vaccinated, and 15% were unaware of their vaccination status. During the outbreak, New York lawmakers also limited the states vaccine exemption laws, revoking a parents' ability to claim a religious exemption for mandatory school vaccinations. According to the New York Health Department, more than 26,000 children had previously gone unvaccinated for religious reasons in public and private schools and day-care centers across the state. Although transmission of measles may no longer be of heightened concern in New York City, it is important to remember the cost, monetary and otherwise, that these outbreaks force on communities, especially given other outbreaks in the U.S. and around the world.

Lena H. Sun, *The Washington Post*, Sept. 3, 2019  
<https://www.washingtonpost.com/health/2019/09/03/new-york-city-declares-end-largest-measles-outbreak-nearly-years/>

### **MICHIGAN BECOMES FIRST STATE TO BAN FLAVORED E-CIGARETTES**

Michigan Governor Gretchen Whitmer (D) ordered a ban on flavored e-cigarettes, stating that "My number one priority is keeping

our kids safe and protecting the health of the people of Michigan.” Whitmer also indicated that it is problematic that e-cigarette companies are using sweet flavors, such as bubble gum and “fruit loops”, to hook young people on these dangerous devices containing nicotine. The ban is supposed to last for six months, and shall be renewed for another six months. Meanwhile, the health department is supposed to develop more permanent restrictions banning the flavored e-cigarettes. Although Michigan is the first state to prohibit the sales of flavored e-cigarettes, in late June, San Francisco became the first city to ban the sale and distribution of all e-cigarettes. A proposal, urged by federal officials to the FDA last year, would bar the sale of sweet and kid-friendly vaping products in stores. This proposal is not yet finalized.

Laurie McGinley, *The Washington Post*, Sept. 3, 2019  
[https://www.washingtonpost.com/health/michigan-becomes-first-state-to-ban-flavored-e-cigarettes/2019/09/03/34f234c6-ce4c-11e9-8c1c-7c8ee785b855\\_story.html](https://www.washingtonpost.com/health/michigan-becomes-first-state-to-ban-flavored-e-cigarettes/2019/09/03/34f234c6-ce4c-11e9-8c1c-7c8ee785b855_story.html)

### COLLEGE GRAD BANNED FROM AMERICORPS POSITION FOR ANXIETY COUNSELING WINS REFORMS

AmeriCorps National Civilian Community Corps reached an agreement to revise its health screening process after an alleged violation of disability laws was announced by the American Civil Liberties Union. The ACLU filed an administrative complaint arguing that a national service program for young adults violated the Rehabilitation Act of 1973. This arose after the lead plaintiff, Susie Balcom, received an offer to work for the program. However, the offer was rescinded after Balcom

disclosed in the medical questionnaire that she had attended three counseling sessions for anxiety. Resulting from this incident, AmeriCorps will implement a new health screening questionnaire, in addition to a new formal system in which reasonable accommodations can be requested.

Debra Cassens Weiss, *ABA Journal*, Sept. 18, 2019  
<http://www.abajournal.com/news/article/college-grad-banned-from-ameri-corps-position-for-anxiety-counseling-wins-reforms>

### UP IN SMOKE: VAPING TURNS DEADLY

Federal officials at the Centers for Disease Control and Prevention (CDC) have continued reports about the mysterious dangers and lung injuries related to vaping. As of mid-September, the number that have fallen sick has risen to 805 people across virtually all of the U.S., with 12 deaths being confirmed in 10 states. There are multiple factors inhibiting both the CDC’s investigation into the cause of the outbreak, and the criminal investigation being conducted by the U.S. Food and Drug Administration (FDA) and the Drug Enforcement Administration (DEA). The CDC explained that narrowing down the cause has been challenging because no single e-cigarette or vaping product, brand, or substance has been definitively linked to the outbreak. Also those currently hospitalized have used a wide variety of products with varying ingredients, and often they have reported a history of using both nicotine and THC products. There are also variances in where these products are acquired, some from stores, while others online or on the street. THC products purchased on the black market have come under increased scrutiny as investigations have expanded to

include possible manufacturers and distributors of these products. The suspected cause of these lung injuries is some kind of chemical exposure, with investigators currently focused on vitamin E oil, or vitamin E acetate. Vitamin E acetate has been used in the marijuana industry to “stretch out THC” used to fill vape cartridges since it is colorless, odorless, and much cheaper than THC oil. But health officials have warned of the health hazards related to inhaling vitamin E acetate, possibly creating a link between the symptoms reported by patients: “cough, shortness of breath, and chest pain.” These combined factors have made investigating the outbreak increasingly difficult, along with younger patients being more reluctant to share information as it relates to their use of marijuana.

Lena H. Sun, *The Washington Post*, Sept. 26, 2019  
<https://www.washingtonpost.com/health/2019/09/26/vaping-related-lung-illnesses-soar-cases-states/>

### JOHNSON & JOHNSON MAKES A DEAL

To avoid trial, Johnson & Johnson (J&J) settled for \$20.4 million with the two Ohio counties behind the opioid crisis lawsuit. The allegations against J&J stem from two of its opioid painkillers: the fentanyl patch, Duragesic, and a tapentadol pill, Nucynta. J&J is not alone in making a deal prior to trial; they are the

fourth drug manufacturer to do so in the sea of lawsuits that municipalities and states have filed against similarly accused companies. J&J was accused of contributing to the widespread opioid-addiction crisis in two Ohio counties through aggressive marketing practices and lenient distribution policies. Their settlement includes a \$10 million cash payment, a \$5 million reimbursement for legal fees, and a \$5.4 million charitable contribution to opioid-related nonprofits such as those treating babies born to opioid-addicted mothers. J&J claims this settlement allows them to avoid using resources in the uncertainties of trial and focus them towards making “meaningful progress in addressing the nation’s opioid crisis.” In this Ohio deal, J&J was not required to admit liability. They are facing other opioid lawsuits across the country. The bankruptcy of Purdue Pharma, maker of OxyContin, has cued J&J and other companies into possibly using bankruptcy in an attempt to reach a global resolution of these cases; progress into this argument will likely play out in the coming months.

Sara Randazzo, *The Wall Street Journal*, Oct. 1, 2019  
<https://www.wsj.com/articles/johnson-johnson-agrees-to-settle-ohio-opioid-lawsuits-for-20-4-million-11569977306>

