

# JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

## Updates on Immigrant Older Adults and Public Charge

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# Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems with getting on to the webinar? Send an e-mail to [trainings@justiceinaging.org](mailto:trainings@justiceinaging.org).
- Slides and a recording are available at Justice in Aging – Advocates Resources – Trainings: [justiceinaging.org/resources-for-advocates/webinars](https://justiceinaging.org/resources-for-advocates/webinars). See also the chat box for this web address.

# JUSTICE IN AGING

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FIGHTING SENIOR POVERTY THROUGH LAW

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ individuals, and people with limited English proficiency.

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## *Join Our Network!*

Go to [justiceinaging.org](https://justiceinaging.org) and hit "Subscribe."

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Open a text and text the message "4justice" to the number 51555.

# Diversity, Equity, and Inclusion

To achieve Justice in Aging, we must:

- Acknowledge systemic racism and discrimination
- Address the enduring negative effects of racism and differential treatment
- Promote access and equity in economic security, health care, and the courts for our nation's low-income older adults
- Recruit, support, and retain a diverse staff and board, including race, ethnicity, gender, gender identity and presentation, sexual orientation, disability, age, economic class

# Today's Agenda

What is public charge?

What's the current status of the rule & litigation?

How does it impact older adults?

What can you do?

# What is Public Charge?

- The “public charge” test has been a part of federal **immigration law** for over 100 years
- Refers to a person who is considered **likely to become primarily dependent on the government for support**
- **Totality of the circumstances** test—when making a public charge inadmissibility determination, the government looks at many factors

# How Does the Public Charge Test Work?

Age

Income and  
Financial Status

Health

Education and Skills  
(includes English  
proficiency)

Family Status

Affidavit of  
Support

Public charge inadmissibility is assessed **prospectively**—immigration officials look at a number of factors, called a “**totality of circumstances**” to project whether a person will become a public charge in the future

# When Does the Public Charge Inadmissibility Test Come Up?

## **Public charge assessment is made when:**

- Applying to enter the U.S.
- Applying to adjust status to become a Lawful Permanent Resident (LPR/green card)
- An LPR leaves the U.S. for more than 180 consecutive days (6 months) and reenters

## **NO public charge assessment:**

- When applying to become a U.S. citizen
- For certain categories of immigrants (such as refugees, asylees, survivors of domestic violence)

**Primarily affects family-based immigrants**

# How Has Public Charge Changed?

**Previous Definition:** An immigrant “likely to become primarily dependent on the government for subsistence”

**New Definition:** A person who “receives one or more **public benefit**... 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).”

**\*Cash Assistance for  
Income Maintenance**

**Supplemental Nutrition  
Assistance Program  
(SNAP or Food Stamps)**

**\*\* Medicaid  
(with exceptions)**

**\*Long Term Institutional  
Care at Government  
Expense**

**Federal, State, Local and  
Tribal Cash Assistance**

**Housing Assistance  
(Public Housing, Section  
8 Housing Vouchers &  
Rental Assistance)**

\*Included under new policy as well

\*\*Exceptions for emergency Medicaid, entirely state-funded coverage, and coverage of children < 21, pregnant women and new mothers.

# Public Benefits Not Included in the Regulation

**Any benefit not *specifically listed* in the regulation will not be considered**

- Emergency medical assistance
- Medicaid for children <21 or pregnant women (+60 days postpartum)
- Disaster relief
- Entirely state, local, or tribal programs (other than cash assistance)
- Children's Health Insurance Program (CHIP)
- Subsidies under the ACA
- Older Americans Act programs
- Energy Assistance (LIHEAP)
- Transportation vouchers or non-cash transportation services
- Non-cash TANF benefits
- Federal Earned Income Tax Credit and Child Tax Credit
- Veteran-specific benefits

# What Does the SCOTUS Decision Mean?

- The issue appealed to SCOTUS was whether the Second Circuit Court of Appeals should have decided to grant a nationwide preliminary injunction
- SCOTUS issued a stay of the preliminary injunction, meaning that the DHS public charge rule can go into effect while the litigation moves forward
- The regulation took effect February 24
  - The parallel State Department rules also became effective
- Litigation in multiple federal courts continues, and is now moving to the merits

# Important Reminders

Newly named benefits will not be considered in public charge determinations if:

- Used before February 24, 2020
- Received by an immigrant's family members
- Received by an immigrant while in an exempt status

## **IMPORTANT NOTE:**

References to October 15, 2019 in the regulations and on associated forms should be read as February 24, 2020.

# Kareena

- From India—her son petitioned for her and lives with her son and grandson
- Living in the US as a green card holder for 12 years
- 72 and retired from job as cashier
- Receives Medicaid & SNAP
- Returned to India to visit her sister who is ill
- If she stays in India for more than 180 days (6 months), she may be subject to a public charge test when reentering the US



# Totality of Circumstances Test— Kareena



**Positive Factors  
(\*Heavily  
Weighed)**

**Negative Factors  
(\*Heavily  
Weighed)**

Unemployed (even  
though retired)

Too old (age 72)

Health  
Insurance:  
Medicare

Received public  
benefits\* (Medicaid &  
SNAP)

# Disproportionate Impact on Seniors

- The number of seniors (65+) in the US who are immigrants is growing
  - From 2.7 million in 1990 → nearly 5 million in 2010
  - Over 1.1million noncitizens age 62+ live in low-income households
  - Parents of US Citizens account for 30% of family-based admissions
- Nearly impossible for older adults to pass the “public charge” test under the new criteria—health, age, income, work, etc.
- Seniors living in immigrant families in the U.S. may be afraid to access services they need
- Caregivers for seniors & people with disabilities will also be impacted

# How Can You Talk to Immigrant Older Adults About This?

- Most immigrants will not be affected.
- **This is an immigration test.** It is not applied when applying for public benefits or seeking health care.
- Use of public programs does not automatically make you a public charge.
- Many public programs are not considered in the public charge test.
- Benefits used by family members will not count in public charge decisions.
- There are laws protecting the personal information of public benefit applicants and recipients.

**Get legal help understanding if and how public charge applies to you or your clients. For free or low-cost options, visit:**  
[www.immigrationadvocates.org/nonprofit/legaldirectory](http://www.immigrationadvocates.org/nonprofit/legaldirectory)

# Questions?

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