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.

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, and economic class
Today’s Agenda

- What is public charge & how has it changed?
- What is the current status of the public charge rule & litigation?
- How do changes to public charge impact older adults?
- How has COVID19 affected public charge?

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
When Does the Public Charge Inadmissibility Test Come Up?

<table>
<thead>
<tr>
<th>Public charge assessment is made when:</th>
<th>NO public charge assessment:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Applying to enter the U.S.</td>
<td>• When applying to become a U.S. citizen</td>
</tr>
<tr>
<td>• Applying to adjust status to become a Lawful Permanent Resident (LPR/green card)</td>
<td>• For certain categories of immigrants (such as refugees, asylees, survivors of domestic violence)</td>
</tr>
<tr>
<td>• An LPR leaves the U.S. for more than 180 consecutive days (6 months) and reenters</td>
<td></td>
</tr>
</tbody>
</table>

Primarily affects family-based immigrants

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.

How Has Public Charge Changed?

Definition of Public Charge

- Previous Definition: An immigrant “likely to become primarily dependent on the government for subsistence”
- New Definition in Current Rule: A person who “receives one or more public benefits... 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).”
How Has Public Charge Changed?

Public Benefits Considered

- Cash Assistance for Income Maintenance
- Supplemental Nutrition Assistance Program (SNAP or Food Stamps)
- ** Medicaid (with exceptions) & Medicare Savings Programs
- 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 public charge test 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 Public Charge Test

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

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

Additional Considerations on Use of Benefits

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.
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 1.1 million 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

Current Status & Litigation

What is the Current Status of the Public Charge Rule?

• The 2019 DHS Public Charge Rule is in effect nationwide
  • The regulation first took effect February 24, 2020 after Supreme Court lifted injunctions
  • July 29th Order from SDNY Court blocked the rule again nationwide during the COVID-19 emergency
  • September 11th 2nd Circuit Decision stayed the injunction

• Parallel State Department rules & changes to Foreign Affairs Manual are currently blocked nationwide
  • Separate July 29th Order from SDNY blocked this rule nationwide indefinitely
  • Order also blocked a presidential proclamation that would restrict immigration to the U.S. by people who are uninsured and cannot pay the costs of their health care
What is the Current Status of Litigation?

- After the final rule was published in August 2019, states, counties & non-profits filed 9 lawsuits challenging the DHS rule on its merits.
- Several courts issued nationwide preliminary injunctions blocking the rule from taking effect as scheduled.
- In January 2020, the U.S. Supreme Court stayed the preliminary injunctions.
- In January 2020, the rule went into effect Feb. 24, 2020.
- A July 2020 injunction blocking the rule during the COVID-19 emergency period was stayed by 2nd Circuit.
  - August 12th 2nd Circuit Decision had narrowed the injunction to NY, CT, VT; September 11th panel decision stayed the injunction.
- Litigation in multiple federal courts continues, and is now moving to the merits.
- Litigation also continues on the parallel DOS rule.

Examples

Kareena

- From India—her son petitioned for her and lives with her son and grandson in Virginia.
- Living in the US as a green card holder for 12 years.
- 72 and retired from job as home health aide.
- 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

<table>
<thead>
<tr>
<th>Positive Factors</th>
<th>Negative Factors (<em>Heavily Weighed</em>)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health Insurance</td>
<td>Illiteracy below 125% FPL</td>
</tr>
<tr>
<td>Retired &amp; Single</td>
<td>Unemployed (less than 65 years)</td>
</tr>
<tr>
<td>Poor Health Status</td>
<td>Unemployed (65+ years)</td>
</tr>
</tbody>
</table>

**Positive Factors**
- *Heavily Weighed*

**Mei**

- Mei is from China
- Living in California since 2000 and received a green card 4 years ago
- 80 years old and retired several years ago from job as a cashier
- She is dually eligible for Medicare & Medi-Cal (state-funded)
- Returned to China in January to celebrate the Lunar New Year
- Intended to stay through April but has not been able to return to the U.S. because of COVID-19 travel restrictions
- It has now been more than 180 days (6 months), so she may be subject to a public charge test when reentering the US

**Note Mei's enrollment in Medi-Cal is not a negative factor because it is state funded**
How to Talk about Public Charge

• This is an immigration test. It is not applied when applying for public benefits or seeking health care.
• Most immigrants will not be affected.
• It does not apply when applying to become a U.S. citizen.
• It does not apply to most green card holders (LPR), unless they are reentering the U.S. after being abroad for more than 180 days.
• Use of public programs does not automatically make an immigrant 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.

Public Charge & COVID-19

Public Charge & Access to Benefits During COVID19 Pandemic

Health Care
• Testing, prevention, or treatment for COVID-19 will not be used against immigrants in a public charge test.
• Emergency Medicaid, ACA Marketplace subsidies, and care received at Community Health Centers are not considered in the public charge test.

Cash Assistance & Unemployment Insurance
• CARES Act stimulus payments are not considered in the public charge test because they are a tax credit.
• Unemployment insurance and Pandemic Unemployment Assistance, not considered in public charge test.

Food Assistance
• Home-delivered meals, Pandemic EBT (P-EBT), WIC, and TEFAP are not considered in the public charge test.
• Federally-funded SNAP benefits may be included in the public charge test. (Note that because of eligibility restrictions, few individuals who are eligible for SNAP are also subject to a public charge determination.)
Important Reminders
• There is no public charge test when applying to become a U.S. citizen.
• Public charge does not apply to most green card holders (LPR), unless they are reentering the U.S. after being abroad for more than 180 days.
• Public charge is an immigration test and every situation is different—always refer clients to an immigration attorney on questions about if and how public charge applies to them.
  • For free or low-cost legal assistance options, visit: www.immigrationadvocates.org/nonprofit/legaldirectory

Additional Resources
• Justice in Aging
  • Public Charge & Immigrant Seniors
  • Key Takeaways on the Final Immigration Public Charge Rule
• Protecting Immigrant Families Campaign
  • ProtectingImmigrantFamilies.org
  • Immigrant Eligibility for Public Programs During COVID-19

Natalie Kean
nkean@justiceinaging.org
Denny Chan
dchan@justiceinaging.org

Want to receive Justice in Aging trainings and materials?

Join Our Network!
Go to justiceinaging.org and hit “Subscribe.”
Send an email to info@justiceinaging.org.
Open a text and text the message “4justice” to the number 51555.