

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Immigrant Older Adults and Public Charge

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- 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.
- Slides and a recording are available at Justice in Aging - Advocates Resources - Trainings: justiceinaging.org/resources-for-advocates/webinars. See also the chat box for this web address.

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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 populations that have traditionally lacked legal protection such as women, people of color, LGBT 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, economic class

Today's Agenda

What is public charge and what are the proposed changes?

What are the possible effects on older adults?

What can you do about the proposed changes?

What Is Public Charge and When Does It Come Up?

A public charge assessment is made when a person:

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

Public charge assessment is NOT made when a person:

- Applies to become a U.S. citizen
- Falls under certain categories of immigrants (such as refugees)

Current Public Charge Test

Definition

“Public Charge” is a term used by U.S. immigration officials to refer to a person who is considered likely to become primarily dependent on the government for subsistence.

Totality of Circumstances Test

- ✓ Age
- ✓ Health
- ✓ Family status
- ✓ Financial status
- ✓ Education and skills
- ✓ Affidavit of support

Current Public Charge Test

Only two types of benefits considered:

1. Cash assistance for income maintenance (TANF, SSI, general assistance)
2. Institutionalization for long-term care at government expense

Affidavit of support is generally enough to overcome public charge.

Government looks to Affidavit of Support from sponsor and joint sponsor if individual's income is not 125% of FPL or above.

Changes in Proposed Public Charge Regulation

1

New definition of “public charge”

2

Totality of circumstances test has new detailed negative factors that make it much harder for low and moderate income seniors to pass

3

Additional public benefits included that many seniors rely on to meet their basic needs

Totality of Circumstances Test

Positive Factors
(*Heavily Weighed)

Negative Factors
(*Heavily Weighed)

Individual or Household income
250% of FPL or above*

Age 18 to 60

Perfect Health

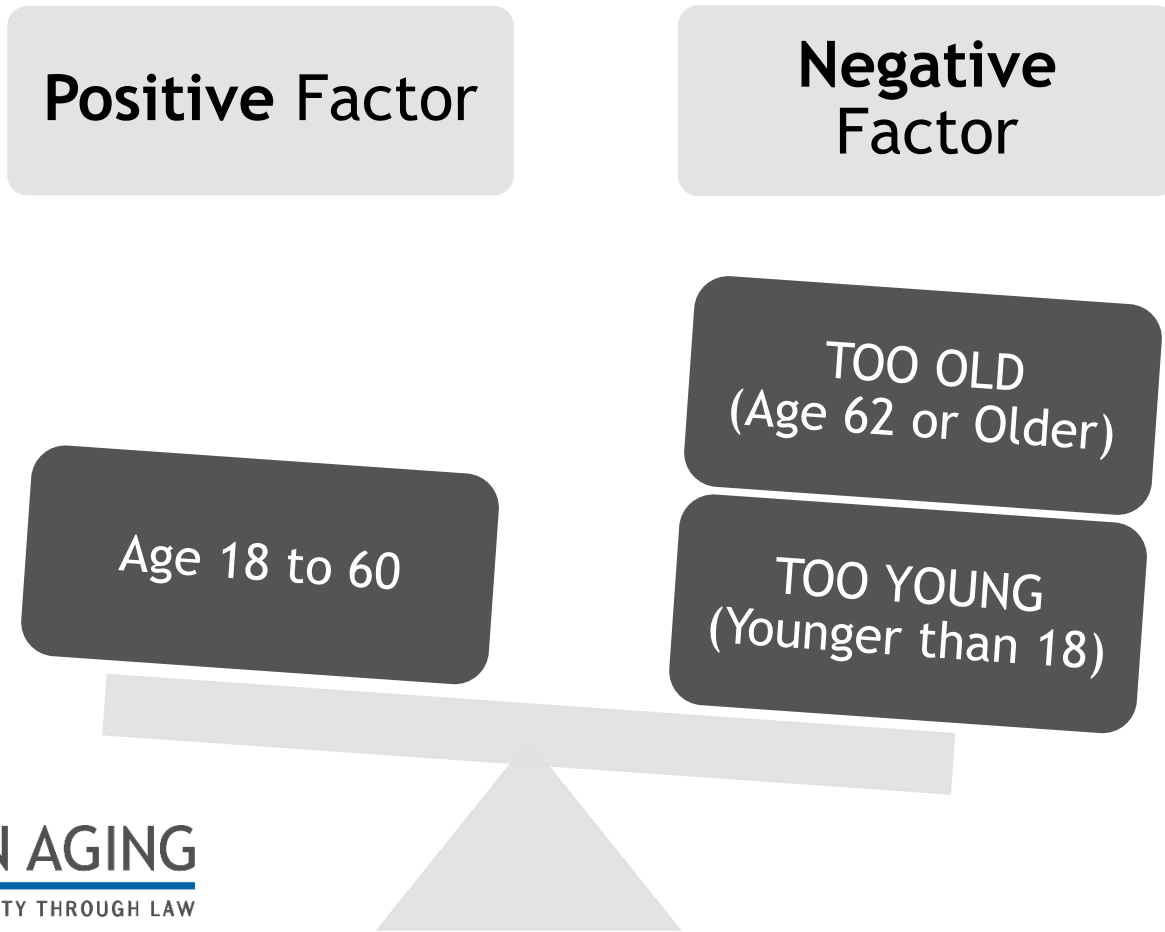
TOO OLD (Age 62 or
Older)

Limited English
Proficiency

Health condition w/o
private insurance or \$
to pay for care*

Receipt of public
benefits*, including
Medicaid & Medicare
Extra Help

Totality of Circumstances Test: Age



Totality of Circumstances Test: Health

Positive Factor

Negative Factor

Perfect Health

Condition will interfere with productivity, ability to care for self, attend school, or work

Diagnosed with a medical condition

Public Benefits Included

***Cash Support for Income Maintenance
(SSI, TANF)**

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

****Medicaid
Including HCBS, Medicare
Savings Programs**

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

**Medicare Part D Low Income
Subsidy
("Extra Help")**

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

* Included under current policy as well

** Exception for Emergency Medicaid & certain disability services offered in school.
DHS is asking for input on including CHIP, but it is not included in draft regulatory text

Changes Are Not Retroactive

- This is just a proposal; the 1999 field guidance is still in effect.
- The rule is clear that, other than cash or long-term care at government expense, *benefits used before rule is final and effective will not be considered* in the public charge determination.

Impacts of the Proposed Regulation

The rule may deter legal immigrants and their family members (including citizens) from using public benefits they are eligible to receive due to:

- Confusion over what benefits are covered
- The complexity of the rule's structure
- Discretionary application of the rule

26 million people in families with immigrants might be chilled from participating in basic needs programs

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. will be afraid to access services they need
- People with Disabilities or serious illness will face insurmountable barriers under the new “public charge” criteria
- Caregivers for Seniors & People with Disabilities will also be impacted

Kareena

- From India
- Living in the US as a green card holder for 12 years
- Her son petitioned for her and lives with her son and grandson
- 72 and retired from job as cashier
- Receives Medicare and extra help through Low-Income Subsidy Program for prescriptions
- Returned to India to visit her sister who is ill
- Worried that if she leaves the US, she can't return



How Can You Talk to Immigrant Older Adults About This?

1. The regulation is not final and you can speak out against it

2. The proposed regulation would not consider any newly listed benefits before it is final

3. The regulation does not apply to all immigrants

4. The privacy of your personal information is protected by law

5. You are not alone, and you can fight back!

Get legal help understanding how this would apply to your clients.

For free or low-cost options, visit:

www.immigrationadvocates.org/nonprofit/legaldirectory

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Help Us Reach 100,000 Comments by December 10

High Quality Organizational Comments

- **Who?** Nonprofits, Direct Service Providers, local, state and national elected officials
- **What?** Templates for 40+ sectors available soon, see Comment FAQ document
- **Where?** Regulations.gov
- **When?** Can wait until second half of comment period

High Quantity Individual Comments

- **Who?** You and your colleagues and friends and family, anyone who cares about seniors!
- **What?** Text to edit on websites with a few clicks.
- **Where?**
Protectingimmigrantfamilies.org
and OurAmericanStory.us
- **When?** Starting now and every day until December 10

About Commenting

Can non-profit organizations comment? **Yes!**

- Lobbying involves legislative proposals while regulations implement existing laws.
- **Submitting public comments to an agency is not considered lobbying under federal law.**
- You can also encourage your networks to submit comments. This will not hurt your organization's Section 501(c)(3) tax exemption
- Be aware of restrictions on funding and consider commenting on your own time.

What Else Can You Do?

Join the
Campaign

JusticeinAging.org
ProtectingImmigrantFamilies.org

Share
your
Story

bit.ly/PIFstory

Speak
up

Use #protectfamilies on social
media



Protecting Immigrant Families Campaign



Broad coalition including Justice in Aging, immigration advocacy groups, and others like:

- CenterLink: The Community of LGBT Centers
- Food Research and Action Center
- MAZON: A Jewish Response to Hunger
- National Education Association
- Workers Defense Project

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