



U.S. Citizenship
and Immigration
Services

Fact Sheet

May 25, 1999

PUBLIC CHARGE

In an effort to protect the public health and help people become self-sufficient, the Clinton Administration is publishing a proposed rule in the *Federal Register* on May 26 that clarifies the circumstances under which a non-citizen can receive public benefits without becoming a “public charge” for purposes of admission into the United States, adjustment of status to legal permanent resident, and deportation.

The new regulations, for the first time, define “public charge” and state which benefits a non-citizen may receive without concern for negative immigration consequences. The regulation describes the various issues that must be considered in making a public charge determination. This information will help non-citizens and their families make informed choices about whether to apply for certain benefits. The regulation also enhances the administration of the nation’s immigration laws by promoting fair and consistent decision-making.

Background

“Public charge” has been part of U.S. immigration law for more than 100 years as a ground of inadmissibility and deportation. An alien who is likely at any time to become a public charge is inadmissible and ineligible to become a legal permanent resident of the United States. Also, an alien can be deported if he or she becomes a public charge within five years of entering the United States from causes that existed before entry. Instances of deportation on public charge grounds have been very rare.

Recent immigration and welfare reform laws have generated considerable public confusion and concern about whether a non-citizen who is eligible to receive certain Federal, State, or local public benefits may face adverse immigration consequences as a public charge for having received public benefits.

This concern has prompted some non-citizens and their families to deny themselves public benefits for which they are eligible -- including disaster relief, treatment of communicable diseases, immunizations, and children's nutrition and health care programs -- potentially causing considerable harm to themselves and the general public. This impact undermines the government's policies of increasing access to health insurance and health care and helping people to become self-sufficient by drawing temporarily on public support during a transition period.

Definition of Public Charge

The proposed rule, which was drafted after an extensive interagency process with benefit-granting agencies, defines "public charge" to mean **an alien who has become (for deportation purposes) or is likely to become (for admission or adjustment of status purposes) "primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance, or institutionalization for long-term care at government expense."** **This definition alone, however, cannot be used to determine if an alien is a public charge -- other issues must be considered, as specified below.**

The Immigration and Naturalization Service (INS) is implementing this definition of public charge immediately through field guidance discussing the definition and standards for public charge determinations. The field guidance will be published along with the proposed rule in the *Federal Register*. In addition, the United States Department of State (DOS) will send a cable to U.S. consulates abroad providing guidance on public charge determinations for admission purposes. By making this guidance effective immediately, INS and DOS are helping to relieve public concerns about receiving health care and other important services, as well as providing field personnel with the tools needed to enforce immigration law in a clear and consistent manner.

At the same time, INS is seeking public comment on this approach. The proposed rule includes a 60-day public comment period.

Benefits Subject to Public Charge Consideration

The proposed rule specifies that cash assistance for income maintenance includes Supplemental Security Income (SSI), cash assistance from the Temporary Assistance for Needy Families (TANF) program and State or local cash assistance programs for income maintenance, often called "General Assistance" programs. Acceptance of these forms of public cash assistance could make a non-citizen a public charge, if all other criteria are met (as described below in the section "Criteria for Public Charge Determinations.")

In addition, public assistance, including Medicaid, that is used for supporting aliens who reside in an institution for long-term care -- such as a nursing home or mental health institution -- will also be considered by INS and DOS officials as part of the public charge analysis. Short-term institutionalization for rehabilitation is not subject to public charge consideration.

Benefits Not Subject to Public Charge Consideration

Non-cash benefits and special-purpose cash benefits that are not intended for income maintenance are not subject to public charge consideration. Such benefits include:

- Medicaid,
- Children's Health Insurance Program (CHIP),
- Food Stamps,
- the Special Supplemental Nutrition Program for Women, Infants and Children (WIC),
- immunizations,
- prenatal care,
- testing and treatment of communicable diseases,
- emergency medical assistance,
- emergency disaster relief,
- nutrition programs,
- housing assistance,
- energy assistance,
- child care services,
- foster care and adoption assistance,
- transportation vouchers,
- educational assistance,
- job training programs,
- and non-cash benefits funded under the TANF program.

Some of the above programs may provide cash benefits, such as energy assistance, transportation or child care benefits provided in cash under TANF or the Child Care Development Block Grant (CCDBG), and one-time emergency payments under TANF.

Since the purpose of such benefits is not for income maintenance, but rather to avoid the need for on-going cash assistance for income maintenance, they are not subject to public charge consideration.

Criteria for Public Charge Determinations

The proposed rule states that an alien's mere receipt of cash assistance for income maintenance, or being institutionalized for long-term care, does not automatically make him or her inadmissible, ineligible to adjust status to legal permanent resident, or deportable on public charge grounds. The law requires that INS and DOS officials consider several additional issues as well. Each determination is made on a case-by-case basis.

Admission and Adjustment of Status

Before an alien can be denied admission to the United States or denied adjustment of status to legal permanent resident based on public charge grounds, a number of factors must be considered by INS and DOS, including: the alien's age, health, family status, assets, resources, financial status, education and skills. No single factor -- other than the lack of an Affidavit of Support, if required -- will determine whether an alien is a public charge, including past or current receipt of public cash benefits for income maintenance.

Deportation

The INS can deport an alien on public charge grounds only if the alien has failed to meet the benefit-granting agency's demand for repayment of a cash benefit for income maintenance or for the costs of institutionalization for long-term care. INS may initiate removal proceedings only if the benefit-granting agency has the legal authority to demand repayment and has:

- chosen to seek repayment within five years of the alien's entry into the United States;
- obtained a final judgment;
- taken all steps to collect on that judgment; and
- been unsuccessful in those attempts.

Even if these conditions are met, the alien is not deportable on public charge grounds if the alien can show that he or she received public cash benefits for income maintenance or was institutionalized for long-term care for causes that arose after entry into the United States.

Other Public Charge Clarifications

There is no public charge test for naturalization.

Public charge is not a factor in whether a non-citizen can sponsor a relative to come to the United States.

Benefits received by one member of a family are not attributed to other family members for public charge purposes, unless the cash benefits amount to the sole support of the family.

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