



CDSS

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June 8, 2010

ALL-COUNTY INFORMATION NOTICE NO. I-16-10

TO: ALL COUNTY WELFARE DIRECTORS
ALL FOOD STAMP COORDINATORS
ALL CalWORKs PROGRAM SPECIALISTS
ALL CONSORTIUM PROJECT MANAGERS
ALL QUALITY CONTROL SPECIALISTS

SUBJECT: PUBLIC CHARGE

REFERENCE: UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (USCIS)
FACT SHEET DATED OCTOBER 20, 2009; ALL-COUNTY INFORMATION
NOTICE (ACIN) NO. I-23-03; ACIN I-71-00; ACIN I-97-01

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

The purpose of this letter is to provide County Welfare Departments (CWD) with clarification regarding “public charge” as defined by the United States Citizenship and Immigration Services (USCIS) and to transmit informational material (attached). “Public Charge” is a term used to describe a noncitizen that is likely to become dependent on public benefits. However, receipt of certain public benefits does not necessarily make a noncitizen a “public charge”.

The Food Stamp Program is not a “public cash assistance program for income maintenance,” but a supplementary, nutrition-based, food assistance program. The attached USCIS Fact Sheet clarifies that food stamp households are not considered public charges as a result of receipt of either federal food stamp benefits or state-funded benefits. The fact sheet also conveys the background, definition, and benefits subject to public charge consideration. It should be noted that it is unprecedented for USCIS to put out specific information regarding what constitutes a “public charge”.

The fear of losing immigration status remains a concern in the immigrant community. Often, individuals do not apply for benefits due to concerns about USCIS being contacted; or they may think that as recipients, they must repay the benefits; or they may feel shame associated with receiving assistance. These events and concerns are a hindrance to immigrant utilization of food stamp benefits.

There are other fears and concerns associated with a noncitizen being designated a public charge. The immigrant community may be reluctant to apply for food stamp benefits due to the fear of being subject to deportation or ineligibility for U.S. citizenship. The fear can be so great that individuals are afraid of situations such as: leaving their homes to conduct business or errands, etc., for fear of deportation which could split the children from the parents; or negatively

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impacting the children's and grandchildren's immigration status; or negatively impacting a family member's application for U.S. citizenship; or causing an application to be investigated resulting in the possible deportation of family members.

We encourage the counties to reach out to their immigrant community organization partners by using the attached information as research material for a county-developed flyer. By doing so, the immigrant population can be better informed and reduce the potential of eligible households not applying for food stamp benefits due to misinformation. This information may also be shared with noncitizen households at application and recertification to help alleviate the fear of being considered a "public charge" in the Food Stamp Program.

If you have questions concerning the content of this letter, please contact Sharon Campbell, Program Analyst, Food Stamp Policy Bureau, at (916) 654-0737 or sharon.campbell@dss.ca.gov.

Sincerely,

Original Document Signed By:

CHRISTINE WEBB-CURTIS, Chief
Food Stamp Branch

Attachment

http://www.uscis.gov/USCIS/New%20Structure/Press%20Releases/2009%20Press%20Releases/Oct%202009/public_charge_fact_%20sheet_11_06_09.pdf



Fact Sheet

October 20, 2009

Public Charge

Introduction

Public charge has been part of U.S. immigration law for more than 100 years as a ground of inadmissibility and deportation. An individual who is likely at any time to become a public charge is inadmissible to the United States and ineligible to become a legal permanent resident. However, receiving public benefits does not automatically make an individual a public charge. This fact sheet seeks to inform non-citizens about public charge determinations and help them to make informed choices about whether to apply for certain public benefits.

Background

Under Section 212(a)(4) of the Immigration and Nationality Act (INA), an individual seeking admission to the United States or seeking to adjust status to that of an individual lawfully admitted for permanent residence (green card) is inadmissible if the individual, "at the time of application for admission or adjustment of status, is likely at any time to become a public charge." If an individual is inadmissible, admission to the United States or adjustment of status is not granted.

Immigration and welfare laws have generated some concern about whether a non-citizen may face adverse immigration consequences for having received Federal, state, or local public benefits. Some non-citizens and their families are eligible for public benefits – including disaster relief, treatment of communicable diseases, immunizations, and children’s nutrition and health care programs – without being found to be a public charge.

Definition of Public Charge

For purposes of determining inadmissibility, agency guidance has, since 1999, defined “public charge” to mean an individual who is likely to become “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.” See “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,” 64 FR 28689 (May 26, 1999). In determining whether an alien meets this definition for public charge inadmissibility, a number of factors must be considered, including 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 individual is a public charge.

Benefits Subject to Public Charge Consideration

The agency guidance 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 inadmissible as a public charge, if all other criteria are met. However, the mere receipt of these benefits does not automatically make an individual inadmissible, ineligible to adjust status to lawful permanent resident, or deportable on public charge grounds. *See* “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,” 64 FR 28689 (May 26, 1999). Each determination is made on a case-by-case basis in the context of the totality of the circumstances.

In addition, public assistance, including Medicaid, that is used to support aliens who reside in an institution for long-term care – such as a nursing home or mental health institution – may also be considered as part of the public charge analysis of the totality of the circumstances. Short-term institutionalization for rehabilitation is not subject to public charge consideration.

Benefits Not Subject to Public Charge Consideration

Under the agency guidance, 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 and other health insurance and health services (including public assistance for immunizations and for testing and treatment of symptoms of communicable diseases, use of health clinics, short-term rehabilitation services, prenatal care, and emergency medical services) other than support for long-term institutional care
- Children's Health Insurance Program (CHIP)
- Nutrition programs, including Food Stamps, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the National School Lunch and School Breakfast Program, and other supplementary and emergency food assistance programs
- Housing benefits
- Child care services
- Energy assistance, such as the Low Income Home Energy Assistance Program (LIHEAP)
- Emergency disaster relief
- Foster care and adoption assistance
- Educational assistance (such as attending public school), including benefits under the Head Start Act and aid for elementary, secondary, or higher education
- Job training programs
- In-kind, community-based programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter)
- Non-cash benefits under TANF such as subsidized child care or transit subsidies
- Cash payments that have been earned, such as Title II Social Security benefits, government pensions, and veterans' benefits, among other forms of earned benefits, do not support a public charge determination
- Unemployment compensation is also not considered for public charge purposes

Some of the above programs may provide cash benefits, such as energy assistance, transportation or child care benefits provided 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.