

DATE: July 19, 1999 DOCUMENT TITLE: Guidance on Definition
of Public Charge in Immigration Laws
and Policies

TO: Community Health Centers
Migrant Health Centers
Health Care for the Homeless Programs
Health Services for Residents of Public Housing
Federally Qualified Health Center Look-Alikes
Primary Care Associations
Primary Care Offices

The Department of Justice (DoJ) recently published a Notice of Proposed Rulemaking (NPRM) that clarifies the types of public benefits that will and will not be considered in public charge determinations. These new regulations provide guidance that receiving health care and other critical services will not affect an individual's immigration status. All Health Resources and Services Administration (HRSA) programs, as well as Medicaid (except long-term care) and State Children's Health Insurance Program (CHIP), are among the services that immigrants can receive without affecting their immigration status. The Bureau of Primary Health Care (BPHC) is pleased that this policy issue has been clarified to the benefit of the patients served by its programs.

Provisions of Proposed Rule

The new policy, as outlined in the NPRM published in the Federal Register on May 26, 1999, is effective immediately and includes a 60-day comment period. It is unlikely that this process will result in any changes to the key provisions of this policy. All Federal agencies impacted by this policy have been instructed to implement this policy, to send guidance to their field offices and program grantees, and to work with community organizations to educate their constituents regarding this new policy. Instruction to all field offices of the Immigration and Naturalization Service

(INS) were sent from the DoJ regarding this policy. These standards are national and do not vary by State.

Background

Determination that a person is a **public charge**,[@] under U.S. immigration law, has been used as a grounds for inadmissibility and deportation of immigrants for many years.

Recent immigration and welfare reform laws have generated further confusion about the relationship between the receipt of Federal, State, and local public benefits and the definition of **public charge**[@] in immigration statutes and policies. The DoJ decided to publish a proposed rule defining what programs may be taken into consideration by INS and others in arriving at a **public charge**[@] determination in order to reduce the negative public health consequences produced by the existing confusion and to provide aliens with better guidance as to the types of public benefits that will and will not be considered in public charge determinations.

New **Public Charge[@] Definition**

The new DoJ policy defines public charge to mean an alien who has become (for purposes of deportation) or is likely to become (for purposes of admissibility or adjustment of immigration status) **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.[@]

Totality of the Circumstances Test

The NPRM states that receipt of cash welfare assistance cannot automatically result in a public charge inadmissibility determination. The INS and DoJ officers must still apply a **totality of the circumstances**[@] test which may include receipt of cash assistance for income maintenance purposes, but also must include several mandatory factors, including age, health, family status, assets and resources, financial status, education and skills.

The longer an alien has received cash income-maintenance benefits in the past and the greater the amount of benefits, the stronger the implication that the alien is likely to

become a public charge. The negative implication of past receipt of such benefits or past institutionalization, however, may be overcome by positive factors in the alien's case, demonstrating an ability to be self-supporting. Past receipt of non-cash benefits (other than institutionalization for long-term care) will not be taken into account under the totality of the circumstances test.

Benefits Considered for Public Charge Purposes

Cash benefits for income maintenance, which can be considered by immigration officials as part of the public charge determinations, include the following:

- 1) Supplemental Security Income
- 2) Temporary Assistance for Needy Families, not including non-cash benefits and services such as child care and transportation, or one-time emergency payments to avoid the need for on-going cash assistance, and;
- 3) State and local cash benefit programs that are for the purpose of income maintenance (often called ~~A~~General Assistance~~@~~but which may exist under other names).
- 4) Long-term care benefits under Medicaid

Benefits Not Considered for Public Charge Purposes

*The HRSA programs, including all health center programs, are not considered as a cash benefit for income maintenance purposes. Programs that are **not** considered as a cash benefit for income maintenance purposes, and thus will **not** be considered by immigration officials as part of the public charge determinations, include:*

- 1) Health center programs
- 2) Medicaid, except long-term care. Short periods of rehabilitation are not to be considered.
- 3) Children's Health Insurance Program
- 4) Immunizations
- 5) Testing and treatment of symptoms of communicable diseases
- 6) Prenatal care
- 7) Nutrition programs, including Food Stamps, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the National School Lunch and Breakfast programs, and other supplementary and emergency food assistance programs
- 8) Housing assistance
- 9) Child care services
- 10) Emergency assistance, such as the Low Income Home Energy Assistance Program

- 11) Emergency disaster relief
- 12) Foster care and adoption assistance
- 13) Educational assistance, including benefits under the Head Start Act and aid for elementary, secondary, or higher education
- 14) Job training programs
- 15) In-kind, community-based programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter)

Eligible non-citizens can use all of the services listed above without fear that use of these services will be considered evidence of public charge status. Receipt of these non-cash services does not affect the right of immigrants to be sponsors of other immigrants under an affidavit of support.

Receipt of Cash Welfare by Family Members

Also, the receipt of cash welfare assistance by family members will not be considered relevant to public charge determinations of an individual. The only time this general rule would not apply would be if the family were reliant on their family member's cash public benefits as its sole means of support. If parents enroll their children in programs for which they are eligible, the INS or State will not consider them to be public charges unless these programs provide the sole financial support for the family.

Exceptions from Public Charge Determinations

The following are exempt from public charge determinations:

- 1) Refugees and asylees
- 2) Amerasian immigrants
- 3) Applicants under the Cuban Adjustment Act
- 4) Applicants under the Nicaraguan Relief Act
- 5) Applicants under the Haitian Refugee Immigration Fairness Act
- 6) Lawful permanent residents who have been outside the U.S. 180 days or less

Recommendations

The BPHC encourages BPHC grantees to convey this information to their patients and affiliating service providers so that patients can take full advantage of the services to which they are entitled without fear of it affecting their immigration status. Primary Care Associations (PCAs) and health center programs may want to take the following steps:

- 1) Center staff should be educated regarding these new policies and how they affect the patients they serve.
- 2) Centers should prepare signs and leaflets regarding the new policies that are translated into the languages spoken by the health center patients.
- 3) Outreach workers and other center staff should convey the information to the patients with whom they interact and be prepared to answer questions regarding the policy.
- 4) The PCAs and center staff and board members should work with other advocacy and service organizations providing services to immigrant families regarding how to get the word out regarding these new policies.

It is also important to note that information and support is available for centers and PCAs from national organizations such as the National Association of Community Health Centers.

Medicaid and CHIP It is important for health centers to note that Medicaid (except long-term care) and CHIP will also not be considered in public charge determinations. We encourage centers to enroll your eligible Medicaid and CHIP immigrant patients and their children into these programs so that you may receive the reimbursement afforded under these programs for these patients, rather than using limited BPHC funds targeted for uninsured individuals.

Social Services It is also important for center staff to convey to immigrant patients that they are eligible for such programs as WIC and housing assistance, and to refer them for these services as appropriate.

We encourage you to become familiar with the NPRM and the Field Guidance published in the Federal Register, which are available online at <http://www.hrsa.gov>. If you have any questions regarding how these policies affect health center programs, please contact Leigh Thurmond at (301) 594-4065.

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