STATE OF CALIFORNIA--HEALTH AND HUMAN SERVICES AGENCY

GRAY DAVIS, *Governor*

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June 10, 1999

TO: All County Welfare Directors
All County Administrative Officers
All County Medi-Cal Program Specialists/Liaisons
All County Public Health Directors
All County Mental Health Directors

Letter No. 99-30

PROPOSED FEDERAL RULE ON PUBLIC CHARGE

We are pleased to inform you that the United States Immigration and Naturalization Service (INS) has issued a proposed rule in the May 26, 1999, Federal Register to clarify federal public charge policy with respect to receipt of Medi-Cal, Healthy Families, and other public benefits. In addition, the INS has issued a fact sheet and questions and answers on this topic. Copies of the INS fact sheet and questions and answers are enclosed for your information. Counties may also access this information via the Internet at www.ins.usdoj.gov.

If you have any questions regarding this All County Welfare Directors Letter, contact Mr. John Zapata at (916) 657-0725.

Sincerely,

ORIGINAL SIGNED BY
RICHARD BRANTINGHAM for

Angeline Mrva, Chief
Medi-Cal Eligibility Branch

Enclosure

Department of Justice
IMMIGRATION AND NATURALIZATION SERVICE

FACT SHEET

05/25/99

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.

-- INS --

Questions and Answers

Public Charge

GENERAL

Q1: Why are the Department of Justice (DOJ) and the Immigration and Naturalization Service (INS) issuing field guidance and a proposed regulation concerning public charge, and what is the effect of these documents?

A1: DOJ and INS are issuing this guidance and proposed regulation to alleviate growing public confusion over the meaning of the currently undefined term "public charge" in immigration law and its relationship to the receipt of Federal, State, or local public benefits. By defining "public charge," DOJ seeks to reduce the negative public health consequences generated 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. The guidance defines "public charge" and gives examples of benefits that will and will not be considered by INS officials for public charge purposes. It also summarizes the existing law regarding public charge and explains how the INS will administer these provisions.

Q2: What does it mean to be a "public charge" under the immigration laws?

A2: An alien who is likely at any time to become a "public charge" is ineligible for admission to the U.S. and is ineligible to adjust status to become a lawful permanent resident. An alien who has become a public charge can also be deported from the U.S., although this very rarely happens. These provisions have been part of U.S. immigration law for over 100 years, and the recent immigration reform and welfare reform laws did not substantively change them. Both INS (in the U.S.) and the Department of State (State) (overseas) make public charge determinations.

Q3: How is "public charge" defined, and when will this definition be implemented?

A3: The INS is issuing guidance and a proposed regulation that define "public charge" for the first time. "Public charge" means an alien who has become (for deportation purposes) or who is likely to become (for admission/adjustment purposes) primarily dependent on the government for subsistence. This definition is effective immediately. As discussed below, INS and State will

consider the receipt of cash benefits for income maintenance purposes and institutionalization for long-term care at government expense in determining dependence on the government for subsistence.

IMPLEMENTATION

Q4: How do INS and State decide whether someone is admissible or eligible for adjustment of status under the public charge rules?

A4: In deciding whether an alien is likely to become a public charge, the law requires that the INS (in the U.S.) or State (overseas) take certain factors into account, including the alien's age, health, family status, assets, resources, financial status, education and skills. The government official examines all of these factors, looking at the "totality of the circumstances" concerning the alien, to make a forward-looking decision. No single factor — other than the lack of an Affidavit of Support, if required — will be used as the sole basis for finding that someone is likely to become a public charge, that is, likely to become primarily dependent on the government for subsistence. As described below, non-cash benefits and certain special-purpose cash benefits will not be taken into account under the totality of circumstances test.

Q5: How does INS decide whether someone is deportable as a public charge?

A5: Deportations on public charge grounds are very rare because the standards are very strict. Under the Immigration and Nationality Act, an alien is deportable if he or she becomes a public charge within 5 years after the date of entry into the U.S. for reasons not affirmatively shown to have arisen since entry. The mere receipt of a public benefit within 5 years of entry does not make an alien deportable as a public charge. An alien is deportable only if (1) the state or other government entity that provides the benefit has the legal right to seek repayment from the alien or another obligated party (for example, a sponsor under an affidavit of support), (2) the responsible program officials make a demand for repayment; and (3) the alien or other obligated party, such as the alien's sponsor, fails to repay. The benefit granting agency must seek repayment within 5 years of the alien's entry into the United States, obtain a final judgment, take all steps necessary to collect on that judgment, and be unsuccessful in those attempts. Even if these conditions are met, the alien has the opportunity to show that the reasons he or she became a public charge arose after the alien's entry to the U.S. An alien who can make such a showing is not deportable as a public charge.

Q6: What kind of benefits are considered in deciding whether someone is or is likely to become a public charge?

A6: Not all publicly funded benefits are relevant to deciding

whether someone is or is likely to become a public charge. INS' guidance and proposed regulation clarify what kinds of benefits may and may not be considered in making a public charge determination. In order to decide whether an alien has become or is likely to become a public charge, INS and State will consider whether the alien is likely to become primarily dependent on the government for subsistence as demonstrated by either (1) the receipt of public cash assistance for income maintenance purposes, or (2) institutionalization for long-term care at government expense (other than imprisonment for conviction of a crime). Short-term institutionalization for rehabilitation is not taken into account for public charge purposes.

Public benefits considered to be public cash assistance for income maintenance include:

(1) Supplemental Security Income (SSI);

(2) Temporary Assistance for Needy Families (TANF), but not including supplementary cash benefits excluded from the term "assistance" under TANF program rules or any non-cash benefits and services provided by the TANF program;

(3) State and local cash assistance programs for income maintenance (often called state "General Assistance," but which may exist under other names).

In addition, the costs for institutionalization for long-term care, which may be provided under Medicaid or other programs, may be considered in making public charge determinations.

While the receipt of these benefits may be considered by INS and State for public charge purposes, having received them does not automatically make someone a public charge. As explained above, the totality of circumstances test applies for admission and adjustment. For deportation, all of the procedural requirements, described above, apply.

Q7: Are there public benefits that aliens can legally receive without worrying that the INS and State will consider them a public charge?

A7: Yes. Not all publicly funded benefits will be considered by the INS or the State Department in deciding whether someone is or is likely to become a public charge. The focus of public charge is on cash benefits for income maintenance and institutionalization for long-term care at government expense. Examples of benefits that will not be considered for public charge purposes 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, prenatal care, etc.) other than support for institutionalization for long-term 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 Breakfast programs, and other supplementary and emergency food assistance programs

- Housing assistance
- 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, 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).

*Note that not all categories of aliens are eligible to receive all of the types of benefits described above.

Q8: Do the INS and State consider all types of cash assistance in deciding whether someone is a public charge?

A8: No. INS and State only consider cash benefits intended for income maintenance purposes. Some programs provide cash benefits for special purposes, such as the Low Income Home Energy Assistance Program (LIHEAP), transportation or child care benefits provided in cash under TANF or the Child Care and Development Block Grant (CCDBG), and one-time emergency payments made under TANF to avoid the need for on-going cash assistance. These special-purpose cash benefits are not for income maintenance and therefore are not considered for public charge purposes.

Q9: Normally Food Stamp benefits are given in the form of paper coupons or an electronic benefit card that can be used at authorized stores to buy food. However, in a few areas Food Stamp benefits are given in the form of cash. If Food Stamp benefits are given in the form of cash, can those benefits be considered for public charge purposes?

A9: No. Food Stamp benefits will not be considered for public charge purposes regardless of the method of payment because they are not intended for income maintenance.

Q10: Are health care benefits and enrollment in health insurance programs like Medicaid and CHIP considered for public charge purposes?

A10: No, not unless an alien is primarily dependent on the

government for subsistence as demonstrated by institutionalization for long-term care at government expense. In particular, INS and State will not consider participation in Medicaid or CHIP, or similar state-funded programs, for public charge purposes. This approach will help to safeguard public health, while still allowing INS and State to identify people who are primarily dependent on the government for subsistence by looking to the receipt of public cash assistance for income maintenance. In addition, short-term institutionalization for rehabilitation will not be considered for public charge purposes.

Q11: Do the public charge field guidance and regulation change the policy issued by the Food and Nutrition Service for the WIC Program in WIC Policy Memorandum #98-7, dated March 19, 1998, "Impact of Participation in the WIC Program on Alien Status"?

A11: No. The new field guidance and regulation on public charge are consistent with the WIC policy memorandum issued in 1998. The WIC policy memorandum was developed based on agreements reached with the INS and State. The new field guidance and regulation merely restate and reinforce the agreement previously reached on the impact of participation in the WIC Program and alien status. As noted above, INS and State will not take WIC participation into account for public charge purposes.

AFFIDAVIT OF SUPPORT

Q12: What is an affidavit of support, and who is required to have one?

A12: The Personal Responsibility and Work Opportunity Reconciliation Act and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Section 213A, created a new requirement for all family-sponsored immigrants and those employment-based immigrants who will work for a close relative or for a firm in which a U.S. citizen or lawful permanent resident relative holds a 5 percent or greater ownership interest. An alien who applies for an immigrant visa or adjustment of status in one of these categories on or after December 19, 1997, must have an affidavit of support (AOS), INS Form I-864, from a qualifying sponsor or he or she will be found inadmissible as a public charge. An AOS is a legally binding promise that the sponsor will provide support and assistance to the immigrant if necessary.

The AOS must be signed by a sponsor who meets certain statutory requirements. Sponsors must be able to demonstrate that they are able to maintain the sponsored alien(s) at an annual income of not less than 125 percent of the federal poverty level. (Currently, 125 percent of the poverty level for a family of four is $20,875.) If the family member who filed the visa petition does not have enough money to sponsor the alien(s), then another person can sign an AOS as a "joint sponsor," indicating that he or she is willing to support the immigrant in the future if

needed. The sponsor's obligation under the AOS lasts until the immigrant has naturalized, has worked or can be credited with 40 quarters of work, leaves the U.S. permanently, or dies. The sponsor and joint sponsor (if any) must also agree to repay the government if the immigrant uses certain benefits during that time and if the government asks the sponsor for repayment.

Before IIRIRA, aliens were sometimes sponsored using INS Form I-134, but these affidavits of support were found by some courts not to be legally enforceable. Form I-134 may still be used for categories of aliens who are not required to use the new, enforceable affidavit of support, such as students, parolees, or diversity immigrants.

Q13: Can an affidavit of support help an alien demonstrate to the INS and State that he or she is not likely to become a public charge?

A13: Yes. Since many aliens who apply for an immigrant visa or adjustment of status after December 19, 1997, will have an affidavit of support, INS and State will take that into account in deciding whether the alien is likely to become a public charge in the future. Even though an AOS is necessary for some immigrants and helps to convince the government that they will not become dependent on the government for subsistence in the future, INS or State can still deny an immigrant admission or adjustment of status under the totality of circumstances test based on other factors such as age, health, employment, and education, as described above.

Q14: If lawful permanent residents want to sponsor a relative to come to the U.S., will it hurt their chances if they are receiving or have received public benefits in the past?

A14: Sponsors are not subject to public charge screening under the immigration laws; the question is whether the alien being sponsored is likely to become a public charge. Sponsors must satisfy a different test: they must be able to demonstrate that they are able to maintain the sponsored immigrant(s) at an annual income of not less than 125 percent of the federal poverty level.

Q15: Why does the new INS affidavit of support form ask about whether a sponsor or member of his or her household has received "means-tested public benefits" in the past 3 years?

A15: The purpose of this question is to ensure that the INS or State official making the decision has access to all facts that may be relevant in determining whether the 125 percent test, described above, is met. Any cash benefits received by the sponsor, such as SSI or cash TANF, cannot be counted toward meeting the 125 percent income threshold, but they are not held against the sponsor if he or she can meet the 125 percent test through other resources. The receipt of other means-tested public benefits – such as Food Stamps, Medicaid, or CHIP – have no

effect on sponsorship.

Q16: What happens if a sponsor who has signed the new affidavit of support dies?

A16: The obligation to support the alien terminates with the sponsor's death, but the sponsor's estate would still be obligated to repay any obligations accrued before the sponsor's death. If there is a joint sponsor and only one of the sponsors dies, the remaining sponsor would remain liable under the affidavit of support.

For deportation purposes, if a sponsor has died and there is no joint sponsor, there is no legal obligation under the affidavit of support to repay any means-tested benefits. This means that the first prong of the test for deportation would not be met and the sponsored alien would not become deportable based on the affidavit of support.

EXAMPLE SITUATIONS

Q17: Are there categories of aliens who are not subject to public charge determinations?

A17: Yes. Refugees and asylees are not subject to public charge determinations for purposes of admission or adjustment of status. Amerasian immigrants are also exempt from the public charge ground of inadmissibility for their initial admission to the U.S. In addition, various statutes contain exceptions to the public charge ground of inadmissibility for aliens eligible for adjustment of status under their provisions, including the Cuban Adjustment Act, the Nicaraguan Adjustment and Central American Relief Act (NACARA) and the Haitian Refugee Immigration Fairness Act (HRIFA).

Q18: If an alien has received cash public benefits in the past, but has stopped, will INS or State find that he or she is likely to become a public charge?

A18: Past receipt of cash public benefits does not automatically make an alien inadmissible as likely to become a public charge. It is one factor that will be considered under the totality of the circumstances test to decide whether the alien is likely to become a public charge in the future. For example, if an alien received benefits in the past during a period of unemployment, but now has a job and is self-supporting, he or she would most likely not be found inadmissible as a public charge. The more time that has elapsed since the alien stopped receiving the benefit, the less weight it will be given. The length of time that an alien received benefits and the amount of benefits received are also relevant considerations.

Q19: If an alien has received public benefits in the past, does the alien have to repay them to avoid having INS or State find that he or she inadmissible as a public charge, or

ineligible to adjust status and become a lawful permanent resident?

A19: No. INS and State do not have authority to request that aliens repay public benefits in connection with visa issuance, admission, or adjustment of status.

Q20: Who decides whether an alien must repay a public benefit he or she has received in the past?

A20: The requirements and procedures concerning any demand for repayment of a public benefit are governed by the specific program rules established by law and administered by the benefit granting agencies, or by state and local governments, not by INS or State. The public charge rules in the immigration law do not change these program requirements.

Q21: If a member of an alien's family is receiving or has received public benefits, but the individual alien hasn't, will INS or State hold this against the alien for public charge purposes?

A21: In most cases, no. As a general rule, receipt of benefits by a member of an alien's family is not attributed to the alien who is applying to INS or State for admission or to INS for adjustment of status to determine whether he or she is likely to become a public charge. 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.

In particular, alien parents do not have to worry that the INS or State will consider them to be public charges if they enroll their children in programs for which they are eligible, unless these are cash programs which provide the sole financial support for the family. This is true whether the children are U.S. citizens or non-citizens.

If a parent enrolls in TANF for cash benefits for the "child only," this could be used by INS or State for a public charge determination concerning the parent if this cash is the sole support for the family. However, if there are other sources of support or a parent is working, then the cash assistance would not represent the family's sole source of support.

Q22: If an alien receives public benefits, will it hurt his or her chances to become a U.S. citizen?

A22: No. There is no public charge test for naturalization purposes, so the receipt of benefits is not relevant, as long as they were legally received. Nor is there a requirement to repay benefits received in the past in order to qualify for citizenship.

Q23: Can a naturalized citizen lose his or her citizenship because of receiving public benefits?

A23: No. Nobody can lose his or her citizenship because of receiving public benefits. Once an immigrant becomes a citizen, he or she can receive benefits on the same basis as all other citizens. Citizens cannot be deported or barred from reentering the U.S. after an international trip based on the receipt of public benefits.

Q24: Does an alien have to stop participating in some benefit programs in order to adjust status and become a lawful permanent resident?

A24: No, but someone who is receiving a cash benefit for income maintenance at the same time that he or she applies to become a lawful permanent resident may be considered ineligible for adjustment as a public charge. An alien who has received a cash benefit in the past could reapply to the INS after he or she stops receiving the benefit, and might or might not be considered a public charge.

Someone who is receiving a non-cash benefit – for example, WIC, Food Stamps, Medicaid, or CHIP – would not have to stop participating in the program in order to be eligible to adjust to lawful permanent resident status.

As explained earlier, in all of these situations, the usual "totality of the circumstances" test would apply.

Q25: If a lawful permanent resident has received public benefits and leaves the country, will INS stop him or her from returning on public charge grounds?

A25: In general, a lawful permanent resident who has been outside the U.S. for 6 months or less is not screened for public charge purposes when he or she returns. This is because lawful permanent residents who leave for 6 months or less at a time are not considered applicants for admission when they return, and none of the grounds of inadmissibility, including public charge, apply to them.

There are exceptions to this general rule if (1) the alien has abandoned his or her status as a lawful permanent resident; (2) the alien has engaged in certain illegal activity; (3) the alien was in removal proceedings before he or she left the country; or (4) the alien attempts to enter other than at a port of entry. See INA section 101(a)(13)(C) for more details on these exceptions.

Q26: Can an LPR continue to receive benefits while he or she is out of the country?

A26: If an LPR plans to be out of the country for longer than a month, he should check with the agency providing the benefit to determine the rules. In general, people are not allowed to receive many benefits if they are absent from the country or state of residence for longer than 30 days. If an LPR receives benefits

improperly, it can hurt his chances of re-entering the U.S. or becoming a citizen.

Q27: If a refugee has adjusted to LPR status and then leaves the country for more than 180 days – is he or she at risk of being found to be a public charge and denied reentry?

A27: As noted above, refugees are exempt from public charge determinations for their admission and adjustment to LPR status. Public charge has never been a problem for refugees who travel and return to the U.S., and nothing in the welfare reform law or immigration reform law has changed this.

Q28: When an LPR returns from an international trip, can INS make her pay back Medicaid or Food Stamps that she or her children used before?

A28: No. INS does not have the authority to ask immigrants to pay back these benefits. If an alien has received benefits improperly (e.g., if a person claims to be a resident of a state for purposes of eligibility when she is not a resident, or if she does not tell a caseworker about all of her income), it is up to the benefit-granting agency to request repayment, based on the rules governing that program. Typically a benefit-granting agency would only request repayment in situations involving fraud or overpayment, and it would follow its procedural rules involving notice to the individual and the right to appeal.

Q29: What if an alien has never used cash welfare and is not residing in a nursing home. Can the INS still deny him a green card because they think he might use cash welfare in the future?

A29: Yes, it is possible. INS and State officials must look at all of the factors listed above to determine if a person can support himself in the future. If an alien's current situation related to age, health, resources, and the other statutory factors does not satisfy them that the alien is likely to be able to be self-supporting in the future, then they can refuse to grant a visa or approve adjustment of status, even if he is not currently receiving public cash assistance.

Q30: What if a person is not receiving cash assistance but is very sick and needs an extended period of care in a nursing home or other long-term care institution? Will she have trouble getting her Permanent Resident Card ("green card")?

A30: Yes. If someone is living in a nursing home or has a serious long-term illness that requires institutionalization, she will probably have trouble getting a green card unless she can show that she can get the care she needs without using Medicaid or other government-funded health programs (e.g., county aid). However, a short-term stay in a nursing facility, for example, to physically rehabilitate after surgery, will not be used to deny a

green card. The alien is not deportable on public charge grounds if the alien can show that she received benefits for causes that arose after entry into the U.S.

Q31: An alien who is primarily dependent on the government for subsistence as demonstrated by the institutionalization for long-term care at government expense can be found deportable as a public charge. Does this mean that INS will be conducting raids in nursing homes or other long-term care institutions?

A31: No. INS will not send investigators into nursing homes or other long-term care facilities to look for aliens who might be deportable as public charges. INS may use information concerning institutionalization if it comes to ins' attention through other avenues, but the only way an alien could be found deportable is if all the procedural requirements described above were met.

Q32: If I'm eligible to self-petition for adjustment of status under the Violence Against Women Act (VAWA), do I have to show that I'm not likely to become a public charge?

A32: The Administration is still considering the extent to which self-petitioners under VAWA are subject to the public charge requirements, and will address this in future guidance. The law does make clear that self-petitioners under VAWA do not need to submit an affidavit of support with their application, unlike other family-based immigrants.

Q33: Cuban/Haitian entrants are eligible to receive certain public benefits under welfare reform. If they receive such benefits, will they be barred from adjusting status because they will be considered public charges?

A33: The answer depends on how they become eligible to adjust status. There are statutory exceptions to the public charge ground of inadmissibility for those Cubans who are eligible to adjust to lawful permanent resident status under the Cuban Adjustment Act and NACARA and for those Haitians who are eligible to adjust status under the HRIFA. Cuban/Haitian entrants are subject to the usual public charge rules if they seek adjustment under other provisions of law that do not contain public charge exemptions.

Q34: Certain Amerasian entrants are eligible to receive public benefits under welfare reform. If they receive such benefits, will they be considered public charges?

A34: Amerasian entrants are admitted to the U.S. as lawful permanent residents (LPRs), and they are exempt from the public charge ground of inadmissibility at their initial admission. In most cases, the issue of public charge would never come up again, unless the alien leaves the U.S. for more than 6 months and seeks readmission. At that time, the exemption from public

charge screening would no longer apply and the alien would be treated like any other LPR under the totality of the circumstances test.

Q35: If an alien has been in the U.S. since January 1, 1972, and wants to become a lawful permanent resident under the "registry" provision of the Immigration and Nationality Act, section 249, is there a public charge test?

A35: No. Public charge is not a factor for "registry" aliens under section 249.

Q36: Is it improper for an immigration or consular officer to ask non-citizens at an airport or in an interview whether they have received public benefits in the past, or whether someone in their family has?

A36: No. Immigration or consular officers can ask questions about whether a non-citizen or someone in his or her family is receiving or has received public benefits in the past. Non-citizens should answer such questions completely and truthfully. If an alien tells an immigration or consular officer that he or she has received a benefit that is exempt from consideration for public charge purposes, such as Food Stamps or Medicaid, the officer will not use that information in deciding whether the alien is likely to become a public charge.

Q37: INS is publishing this public charge definition as a proposed rule for notice and comment. What happens if an alien receives one of the "safe" benefits— that is, a supplemental, non-cash benefit and the final rule is different from the proposed rule — can aliens rely on the field guidance?

A37: Aliens may rely on ins' field guidance in determining the benefits that they may safely accept before the final rule is issued. If the final rule is different from the proposed rule, INS will issue additional guidance at that time designed to ensure that non-citizens who relied on the current guidance will not suffer harsher immigration consequences based on that reliance.

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