

DEPARTMENT OF HEALTH SERVICES

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SACRAMENTO, CA 94234-7320



TO: All County Welfare Directors
All County Administrative Officers

October 25, 1990
Letter No.: 90-93

SUBJECT: PUBLIC CHARGE

REFERENCE: ALL COUNTY WELFARE DIRECTORS' LETTER (ACWDL) NUMBER 89-65

The purpose of this letter is to explain what effect the receipt of Medi-Cal benefits may have on INS determinations of public charge. ACWDL 89-65 authorized you to inform applicants of the following:

"Receipt of Medi-Cal benefits by amnesty aliens and special agricultural workers (SAWs) will not make them a public charge according to the Immigration and Naturalization Service. This means that amnesty aliens and SAWs may receive Medi-Cal and not jeopardize their legalization by doing so. If you have any questions, please contact your local legal aid office or center for immigrant rights."

Some counties have asked us about INS' policy toward non-amnesty aliens. Specifically, will INS view as public charges undocumented aliens who have received restricted Medi-Cal benefits and who are applying for lawful admission for permanent residence (LAPR) status? Will INS require such aliens to pay back the cost of Medi-Cal benefits as a condition of status adjustment? We are asking INS to give us its policy in writing. Until we receive it, keep in mind that amnesty aliens (pre-82s, SAWs and RAWs) were the exception, not the rule, to INS' unfavorable outlook on receipt of assistance. This exception was incorporated into the Immigration Reform and Control Act of 1986 and federal regulations. Absent a like prohibition against considering non-amnesty aliens who have received Medi-Cal public charges, it is possible that INS may do so, and may require back payment of benefits received.

We suggest that you do not provide undocumented aliens legal advice regarding public charge and its implications on applications for either Medi-Cal or LAPR status. First, one must be a licensed attorney to provide legal advice. Second, you must avoid the perception of encouraging undocumented aliens to take a risky action or of discouraging them from applying for a government program. Instead, refer aliens with public charge questions to a local legal aid office or center for immigrant's rights.

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If you have additional questions regarding this matter, please contact John Zapata of my staff at (916) 322-6238, ATSS: 492-6238.

Sincerely,

ORIGINAL SIGNED BY

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch

cc: Medi-Cal Liaisons
Medi-Cal Program Consultants