

Public Charge: An Overview

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► What is “public charge”?

“Public charge,” as defined by the former Immigration and Naturalization Service (INS, now U.S. Citizenship and Immigration Services (USCIS)), refers to 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.”¹ The term describes persons who cannot support themselves and who depend on benefits that provide cash—such as Supplemental Security Income (SSI) or Temporary Assistance for Needy Families (TANF)—for their income. An individual who is likely at any time to become a public charge is inadmissible to the United States and ineligible to become a lawful permanent resident.

► How does the government decide whether a person is likely to become a public charge?

A number of factors are considered in determining whether an individual is likely to become a public charge. These include an individual’s age, health, income, family size, education, and skills. No single factor will determine whether an individual is a public charge. Although the government can look at whether the individual used cash welfare, it cannot make its decision based only on what happened in the past.

► What is the background of “public charge” policy?

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 U.S. and ineligible to become

a lawful permanent resident. Becoming a public charge is also a basis for deportation. In 1999, the INS issued a proposed rule as well as field guidance clarifying the meaning of “public charge” in the Immigration and Naturalization Act. The rule and guidance were issued after extensive consultation with benefit-granting agencies, including the Departments of Health and Human Services and Agriculture, and the Social Security Administration, which expressed concerns that recent immigration and welfare reform laws had generated confusion that discouraged many immigrants from applying for benefits that further public health and other important interests of the general public. In issuing the rule, the INS noted that

this situation is becoming particularly acute with respect to the provision of emergency and other medical assistance, children’s immunizations, and basic nutrition programs, as well as the treatment of communicable diseases. Immigrants’ fears of obtaining these necessary medical and other benefits are not only causing them considerable harm, but are also jeopardizing the general public.²

The USCIS guidance specifies that acceptance of cash assistance for income maintenance—specifically, from SSI, TANF, or state or local programs—may be considered in determining whether a noncitizen is inadmissible as likely to become a public charge. In addition, public assistance, including Medicaid, that is used for long-term institutional care—such as in a nursing home or mental health institution—may be considered as a factor in establishing public charge. However, the receipt of these benefits does not automatically make an individual inadmissible, ineligible to adjust status to lawful permanent

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residence, or deportable on public charge grounds. Each determination is made on a case-by-case basis in the context of the totality of the circumstances.

The guidance also establishes that noncash benefits and special-purpose cash benefits that are not intended for income maintenance, but rather to promote other important societal interests, are not subject to public charge consideration. These programs include use of Medicaid, the Children’s Health Insurance Program (CHIP), or other health programs by a member of the family; or the Supplemental Nutritional Assistance Program (food stamps), WIC (the supplemental food program for women, infants, and children), public housing, or other noncash programs by a family member.

Similarly, participating in the health insurance marketplaces created by the Affordable Care Act (ACA) by buying health coverage and obtaining premium tax credits or cost-sharing reductions will not be considered in the public charge decision.

All other noncash programs, such as housing, school lunch, job training, child care, shelters, energy assistance, disaster relief, and health clinics, also are not a public charge consideration.

Use of cash welfare by an immigrant’s children or other family members will not affect the public charge decision as to the individual unless these benefits are the family’s only means of support.

This guidance has been the policy and accepted definition of “public charge” for more than twelve years and during three administrations.

► **Why is receipt of noncash benefits not subject to “public charge” consideration?**

Policy is longstanding. The INS, in consultation with federal, state and local agencies as well as other national experts, and with consideration of historic interpretation and practice, determined that the best evidence of whether an individual is relying primarily on the government for subsistence is either the receipt of public cash benefits for income maintenance purposes or institutionalization for long-term care at government expense.

Noncash benefits are supplementary support. There was agreement among the agencies consulted that noncash benefits provide supplementary support in the form of vouchers or direct services to support nutrition, health, and living condition needs. These benefits provide low-income working families with the ability to remain self-sufficient. According to the Department of Health and Human Services, “[I]t is extremely unlikely that an individual or family could subsist on a combination of non-cash support benefits or services alone.”³ This distinction between cash benefits that can lead to primary dependence on the government and noncash benefits that do not create such dependence was already being applied by the U.S. State Department with regard to food stamps (now the Supplemental Nutrition Assistance Program, or SNAP), a noncash benefit program.

Noncash benefits serve the public good and assist in achieving self-sufficiency. It has never been INS/USCIS policy that “the receipt of any public service or benefit must be considered for public charge purposes” because of the supplemental nature of the program. Attending public schools; participating in school lunch, WIC, or other supplemental nutrition programs; obtaining immunizations and receiving public emergency medical care have not made a person inadmissible or deportable.

Buying health coverage through the ACA’s health insurance marketplaces, even at a reduced cost, will not trigger a public charge finding. These noncash benefits serve the public good and the community interest of improving general health and nutrition, promoting education, and assisting working low-income families in the process of becoming self-sufficient.

¹ “Public Charge” (USCIS webpage), <http://tinyurl.com/yao4rco> (last visited Oct. 7, 2013).

² 64 Fed. Reg. 28676 (May 26, 1999), www.gpo.gov/fdsys/pkg/FR-1999-05-26/html/99-13188.htm (last visited Oct. 7, 2013).

³ 64 Fed. Reg. 28686 (May 26, 1999), www.gpo.gov/fdsys/pkg/FR-1999-05-26/html/99-13188.htm (last visited Oct. 7, 2013).