



## NATIONAL IMMIGRATION LAW CENTER

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# NEW INS GUIDANCE ON PUBLIC CHARGE

## *WHEN IS IT SAFE TO USE PUBLIC BENEFITS?*

The U.S. government has important news about “public charge” – when receiving public benefits may affect your immigration status or your ability to travel outside of the U.S. The government’s new guidance, which took effect May 25, 1999, gives clear rules about when it is and is not safe to use public benefits.

### HIGHLIGHTS OF THE NEW PUBLIC CHARGE GUIDANCE

- Use of Medicaid, CHIP or other health services by you or your family members will **not** affect your immigration status unless you use Medicaid or other government funds to pay for long-term care (nursing home or other institutionalized care).
- Use of food stamps, WIC, public housing, or other non-cash programs by you or your family members will **not** affect your immigration status.
- Use of cash welfare by your children or other family members will **not** affect your immigration status unless these benefits are your family’s only income.
- Your own use of cash welfare, like SSI, TANF, or General Assistance, **might** affect your immigration status, depending on your situation. This is because the INS or State Department can count these benefits in deciding whether you are likely to become a “public charge.”

### OVERVIEW OF PUBLIC CHARGE

#### ▶ WHAT IS “PUBLIC CHARGE”?

“Public charge” is a term used in immigration law. The term describes persons who cannot support themselves and who depend on benefits that provide cash -- like Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI) – for their income. Depending on your immigration status, the Immigration and Naturalization Service (INS) and State Department consular officers abroad can refuse to let you enter the U.S., re-enter the U.S., or become a permanent resident, if they think you will not be able to support yourself without these benefits in the future. Under very rare circumstances explained below, the INS can also deport you if you become a public charge within 5 years of entering the U.S. Public charge is not an issue for immigrants who are applying to become a citizen. Public charge is not an issue for refugees or persons granted asylum.

▶ HOW DOES THE GOVERNMENT DECIDE WHETHER SOMEONE COULD BECOME A PUBLIC CHARGE?

The INS or State Department should look at many factors to decide if you are likely to become a public charge in the future. Although the government can look at whether you used *cash* welfare in the past, it cannot make its decision based only on what happened in the past. The government must look at all of the following factors together to decide whether you might become a public charge in the future:

- Age (are you elderly or very young, and likely to need support?)
- Health (do you have an illness that requires costly treatment?)
- Income (are you low-income or poor with no assets?)
- Family size (do you have a large family to support?)
- Education and skills (are you working now or can you easily find a job?)

When you seek to enter the U.S. or apply for a green card, the government may ask you questions to see if you are likely to become a public charge in the future. It is important to give them information that shows you will not need benefits to support yourself. For example, if you are elderly, but have family in the U.S. with enough money to support you, or, if you have a special skill that will get you a good job in the U.S., you should give this information to the government.

▶ WHAT KINDS OF BENEFITS MIGHT CAUSE A PUBLIC CHARGE PROBLEM?

In deciding whether you are likely to become a public charge, the INS can look at whether you have used *cash* welfare, such as SSI, TANF, or General Assistance, *or* if you need long-term institutional care. But even if you used cash welfare in the past, you can still show that you will not need it in the future (for example, because you have a job now). The INS is supposed to look at your whole situation when it decides if you might become a public charge in the future.

▶ WHAT IF I USED MEDICAID, CHIP, WIC, FOOD STAMPS OR OTHER NON-CASH PROGRAMS?

Using the Children's Health Insurance Program (CHIP), WIC, or food stamps will not affect your immigration status. Using Medicaid can only be a problem if you are in a nursing home or other long-term care. All other non-cash programs, like housing, school lunch, job training, child care, shelters, disaster relief, and health clinics, will not cause a public charge problem.

▶ WHAT IF MY CHILDREN OR OTHER FAMILY MEMBERS USE BENEFITS?

The INS will *not* look at whether your children or other family members used health care or other non-cash benefits like those listed above. If your children or other family members use *cash* welfare (like TANF or SSI), it will not count against you in a public charge decision *unless it is your family's only income*.

## APPLYING FOR A GREEN CARD

- ▶ I AM APPLYING FOR A GREEN CARD. CAN THE INS REFUSE TO GIVE ME A GREEN CARD BECAUSE THEY THINK I MIGHT USE CASH WELFARE ONE DAY?

Yes. If the INS thinks you cannot support yourself and that you will rely on cash welfare in the future, it can refuse to give you a green card -- even if you are not using cash benefits now. See the earlier question for some hints on how you might prove that you will not rely on cash welfare in the future. Using non-cash programs will not cause a problem when you are applying for a green card.

- ▶ I USED CASH WELFARE SEVERAL YEARS AGO, BUT DO NOT RECEIVE CASH BENEFITS TODAY. WILL I HAVE TROUBLE GETTING A GREEN CARD?

You should not be denied a green card just because you used cash welfare in the past. But, you *will* need to show that you are not likely to need cash welfare in the future. It will be easier to show this if you used welfare a long time ago, or only briefly to get through a hard time.

- ▶ I AM NOT RECEIVING CASH WELFARE, BUT I AM VERY SICK, AND LIVE IN A NURSING HOME. COULD I HAVE TROUBLE GETTING MY GREEN CARD?

Yes. If you are in a nursing home or have a serious long-term illness, you will have trouble getting your green card unless you can show that you will be able to get the care you need in the future without relying on Medicaid or other publicly funded programs to pay for your institutional care.

- ▶ IF MY RELATIVE SPONSORS ME TO LIVE IN THE UNITED STATES, WILL THIS HELP ME PROVE THAT I WILL NOT NEED CASH WELFARE IN THE FUTURE?

Yes. Most people who are applying for a green card must have a "sponsor" who can show that he or she has enough money to support you (at 125% of the poverty level -- \$20,875 for a family of four). If your relative does not have enough money to do this, she will have to find a "co-sponsor" who is also willing to help support you. Your sponsor and, if necessary, your co-sponsor, will each have to sign a legal agreement ("affidavit of support"), promising to support you until you have credit for 40 quarters (10 years) of work in the U.S., or until you become a U.S. citizen. Your sponsor and co-sponsor must also agree to pay the government if you use certain benefits during that time. This agreement will help convince the government that you will not need welfare.

## REFUGEES AND OTHERS NOT SUBJECT TO PUBLIC CHARGE

- ▶ I AM A REFUGEE. WILL I HAVE PROBLEMS IF I USE PUBLIC BENEFITS?

No. The public charge law does not apply to:

- Refugees or persons granted asylum in the U.S.
- Cubans or Nicaraguans applying for adjustment of status under the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA)
- Applicants for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1998

- Cubans applying for adjustment under the Cuban Adjustment Act who were paroled as refugees before April 1, 1980
- Amerasian immigrants when they are first admitted to the U.S.
- "Lautenberg" parolees (certain Soviet and Indo-Chinese parolees applying for adjustment of status)
- Registry applicants (persons in the U.S. since before January 1, 1972)
- Special immigrant juveniles

Using any benefits, including cash welfare, will not cause a problem for these immigrants.

### **PERSONS WITH GREEN CARDS**

- ▶ I HAVE MY GREEN CARD. WHAT CAN HAPPEN TO ME IF I GET CASH WELFARE?

In general, using cash welfare will not be a problem for you once you already have your green card. It will not affect your ability to become a citizen. However, it could be a problem if you travel outside of the U.S. for more than 6 months -- see the question on travel below. Using non-cash benefits will not cause a problem for you.

- ▶ I HAVE MY GREEN CARD AND I GET CASH WELFARE. CAN I TRAVEL OUTSIDE OF THE UNITED STATES?

If you are a legal resident who gets SSI, TANF, or other cash welfare right now, you should not travel outside of the U.S. for more than 180 days (about 6 months). Any time you are gone for more than 180 days, the INS can ask you questions about whether you are likely to become a public charge, and may not let you re-enter the country. If you are outside of the U.S. for 180 days or less, in most cases the INS will not ask you questions about public charge when you re-enter the U.S. The INS will only ask you these questions if you intended to live permanently in another country, committed certain crimes, or had a pending deportation or removal case when you left the country.

- ▶ I HAVE MY GREEN CARD AND GET PUBLIC BENEFITS. CAN I STILL RECEIVE MY BENEFITS WHILE I AM OUT OF THE COUNTRY?

If you plan to be outside of the country for more than 30 days, you should check with the agency providing the benefit. It may be against the rules to continue receiving public benefits while you are outside of the U.S. It could hurt your chances of re-entering the U.S. or becoming a U.S. citizen if you received benefits that you were not supposed to receive.

- ▶ WHEN I RETURN FROM A TRIP, CAN THE GOVERNMENT MAKE ME PAY BACK MEDICAID OR FOOD STAMPS THAT I USED BEFORE I LEFT?

No. The government is not supposed to ask you to pay back these benefits unless you received them improperly (for example, if you were not really living in this state but claimed to be a resident, or if you did not tell your welfare worker about all of your income). If you are at the airport or the border and the INS or other agency asks you to pay back benefits, you should get legal help immediately. This is true no matter what your immigration status is.

▶ I HAVE MY GREEN CARD. CAN THE INS DEPORT ME BECAUSE I USE BENEFITS?

No. The INS cannot deport you just for using public benefits that you qualify to receive. The INS can only deport you in rare cases. You cannot be deported unless **all** of the following are true:

- you received *cash welfare or long-term institutional care* for reasons that existed before you entered the U.S., *and*
- you got the cash welfare or long-term care *less than 5 years after you entered the U.S.*, *and*
- you or your sponsor have a *legal debt* to the government agency that gave you the cash or long-term care, and you or your sponsor got a notice from the government that you owed the debt within 5 years of entering the U.S., *and*
- you or your sponsor have *refused to repay* the benefits after the government filed a lawsuit and won in court.

Most programs, like SSI, and TANF, do not create a debt for you. In some states, General Assistance may create a debt for you. Some programs may create a debt for your sponsor. But no sponsor who signed an affidavit of support before December 19, 1997 has a legal debt to the government for a benefit that you received.

Remember, if you need benefits because you became sick, had an accident or other crisis after coming to the U.S., then you cannot be deported for using those benefits. If you begin using benefits more than 5 years after entering the U.S., then you cannot be deported even if you or your sponsor owes the government money for these benefits. For most permanent residents, this 5-year period starts again every time you enter the U.S. after being gone for more than 180 days.

## CITIZENS AND APPLYING FOR CITIZENSHIP

▶ I HAVE MY GREEN CARD AND I AM RECEIVING SSI OR OTHER CASH BENEFITS. WILL THIS STOP ME FROM BECOMING A U.S. CITIZEN?

No. If you are properly receiving public benefits you cannot be denied citizenship for receiving benefits. But if you ever got public benefits improperly, or misled the INS when you got your green card, the INS may decide that you do not have "good moral character," and you could have trouble becoming a U.S. citizen. If you have any questions about this, you should talk to an immigration lawyer or community agency before you apply for citizenship.

▶ I AM A U.S. CITIZEN. WILL I LOSE MY CITIZENSHIP IF I GET BENEFITS?

No, you cannot lose your citizenship if you get benefits. Once you become a U.S. citizen the INS cannot deport you, and they must always let you re-enter the U.S. after a trip to another country.

### Sponsoring your relatives

▶ WILL I HAVE TROUBLE SPONSORING MY RELATIVES IF I HAVE USED BENEFITS?

Using benefits should not affect your ability to sponsor your relative. You *will* need to show that you or your co-sponsor earn enough income to support your relative. To meet this requirement, you cannot count as income the benefits that you received. Currently, the affidavit of support form for sponsors asks whether you or your household members have used benefits within the past 3 years. This is only to make sure that you do not count any cash welfare when you add up your family's income.

***IF YOU ARE NOT SURE*** whether you could be considered a public charge, talk to an immigration lawyer or community agency before you apply for a green card or travel outside of the U.S.

***For Help, Call:***

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Written by the National Immigration Law Center based on the new U.S. government guidance clarifying the meaning of public charge, which took effect May 25, 1999.

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