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LOCAL COMMISSIONERS MEMORANDUM

DSS-4037EL (Rev. 9/89)

Transmittal No: 00 OMM LCM-1

Date: April 5, 2000

Division: Temporary Assistance
& Office of
Medicaid Management

TO: Local District Commissioners

SUBJECT: Change in Public Charge Provisions of the Immigration Laws

ATTACHMENTS: "A Quick Guide to 'Public Charge' and Receipt of Public Benefits" (English and Spanish)
(Not Available On-line)

"Public Charge" has been part of U.S. immigration law for more than 100 years as grounds for 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. Recent immigration and welfare reform laws have generated considerable 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 avoid applying for benefits for which they are eligible.

The concern that receipt of public benefits might cause adverse immigration consequences has deterred some individuals and their families from applying for certain benefits, thereby denying themselves access to treatment of communicable diseases, immunizations, and children's nutrition and health care programs. This impact undermines the government's interest in increasing access to health care.

To alleviate this fear, and to ensure clear and consistent determinations, the Immigration and Naturalization Service (INS) has provided guidance on the criteria to be used in making a public charge determination. An alien will **not** be considered a public charge for using Medicaid, the Children's Health Insurance Program (CHIP), prenatal care programs, or other free or low-cost medical care at clinics, health centers, or other settings (other than long-term care in a nursing home or similar institution).

Trans. No. 00 OMM LCM-1

In addition to medical and health benefits, aliens can also receive the following benefits and still not be classified a public charge:

- One time payment to prevent the need of recurring assistance
- Housing assistance
- Energy assistance, including HEAP
- Emergency disaster relief
- Foster Care and adoption assistance
- Education assistance, including assistance under Head Start
- Job training programs
- Cash benefits for transportation provided under Temporary Assistance for Needy Families (TANF)
- Cash child care benefits provided under the Child Care and Development Block Grant (CCDBG)
- In-kind community based programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short shelter)

As a general rule, an alien will be considered a public charge only if INS, after a review of the individual circumstances, determines that the alien 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, such as Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), and institutionalization for long-term care, such as residing in a nursing home or mental health facility at government expense. However, receipt of such benefits does not automatically create negative immigration consequences.

INS will not consider cash assistance received by an alien's children or other family members for public charge purposes, unless the cash assistance is the family's only means of support. Other factors are also considered 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, such as the alien's age, health, family status, assets, resources, education and skills. In addition, an alien is not deportable on public charge grounds if the alien can show that he or she received cash assistance or was institutionalized for long-term care for causes that arose after entry into the United States.

Public Charge provisions are not applicable to the following groups of aliens:

- Refugees
- Asylees
- Cuban/Haitian
- Amerasian immigrants when first admitted to this country
- Certain Soviet and Indo-Chinese parolees seeking adjustment of status
- Person in the U.S. since 1/1/72
- Special immigrant juveniles

Date: April 5, 2000

Page No. 3

Trans. No. 00 OMM LCM-1

The attached summary guide to public charge has been issued by the INS Districts may wish to reproduce this document for the benefit of applicants who may inquire about these provisions. A Spanish version is also attached.

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