DELTA HEALTH care

Providing Health Oriented Services and Information to the Community

Delta Health Care

P.O. Box 550
Stockton, CA 95201-0550

Fax # (209) 466-1619 (Stockton)

Date: 10/15/98 **Time:** 3:05 am/~~pm~~

To: Chris Jennings **Fax:** (~~#~~) 456-5557

From: Irwin D Stoller

Page: 1 of 5

Comments:

If you should receive this fax in error, please contact Delta Health Care at 209/466-3271

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United Way of San Joaquin County

DELTA HEALTH care
Providing Health Oriented Services and Information to the Community

October 15, 1998

Secretary Madeleine K. Albright
Department of State
2201 C Street
Washington, DC 20520

Subject: "Public Charge" Determinations

Dear Secretary Albright;

As a representative of Delta Health Care, I am writing to urge your office to adopt policies that clarify the impact of the receipt of government-sponsored, health care assistance on an individual's application for permanent residency and adjustment of status. The current confusion on which government assistance programs will or will not have immigration consequences has resulted in fear among eligible immigrants in accessing necessary services including health care services. Unwillingness to seek health care services or to enroll in government-sponsored health care programs creates a public health danger. In addition, California community health centers are also experiencing a growth in uncompensated care that we believe is tied to this fear and that threatens to destabilize California's safety net providers.

I am aware of several letter from "Doris Meissner" that state a general policy regarding the use of Healthy Families benefits and any potential immigration consequences. Unfortunately, it is difficult for us to alleviate the extreme fear that currently exists without being able to provide a clear and official policy statement from INS. We urge you to issue an official policy regarding public charge determinations and further urge that the policy include the following recommendations:

- "Public charge" determinations must exclude non-cash assistance, such as Medicaid and State Children's Health Insurance Programs. This is consistent with the recent letters from Commissioner Meissner clarifying that receipt of public benefits by United States Citizen children will not be counted against the parent applying for residency as long as the assistance is not the sole means of support of the family. In addition, this policy will ensure that eligible families do not fear using necessary health care benefits.

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- Exclude benefits received by family member other than applicant in a public charge determination. Seeking health care or other benefits should not be a decision that may or may not impact the stability of an entire family. It is unreasonable and wrong to make the access of health care such a difficult decision.

- Exclude past, temporary receipt of benefits from a "public charge" determination. To penalize an individual for receiving emergency Medi-Cal for a non-chronic condition in a prospective consideration of who is likely to become a "public charge" is simply unjustifiable especially if one considers the adverse public health consequences that the lack of clarity on this issue has already caused.

We urge your agency to adopt a policy that will bring an end to the hazardous health trends California is currently experiencing. Clear policies from INS and the Department of State that are sensitive to these health concerns is the only answer.

Sincerely,

Irwin D. Staller, M.P.H.,
Executive Director

IDS:alg

cc: Chris Jenning, The White House
Dennis Hayashi, Department of Health and Human Service

DELTA HEALTH care
Providing Health Oriented Services and Information to the Community

October 15, 1998

Ms. Doris Meissner, Commissioner
U.S. Department of Justice
Immigration and Naturalization Service
425 I Street, NW
Washington, DC 20536

Subject: "Public Charge" Determinations

Dear Ms. Meissner;

As a representative of Delta Health Care, I am writing to urge your office to adopt policies that clarify the impact of the receipt of government-sponsored, health care assistance on an individual's application for permanent residency and adjustment of status. The current confusion on which government assistance programs will or will not have immigration consequences has resulted in fear among eligible immigrants in accessing necessary services including health care services. Unwillingness to seek health care services or to enroll in government-sponsored health care programs creates a public health danger. In addition, California community health centers are also experiencing a growth in uncompensated care that we believe is tied to this fear and that threatens to destabilize California's safety net providers.

I am aware of several letter from you that state a general policy regarding the use of Healthy Families benefits and any potential immigration consequences. Unfortunately, it is difficult for us to alleviate the extreme fear that currently exists without being able to provide a clear and official policy statement from INS. We urge you to issue an official policy regarding public charge determinations and further urge that the policy include the following recommendations:

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- Ensure that the INS policy makes clear that local INS personnel will not ask immigrant applicants about the receipt of non-cash assistance including health care benefits. This critical in ending the current confusion regarding current INS "public charge" considerations. An immigrant, who is asked a general question regarding the use of public benefits and who is later denied legal permanent residency status based on a "public charge" determination, will not know which benefits were taken into consideration. An official policy is meaningless it is understood at an individual applicant's level. This understanding only comes with questions which make clear which benefits are taken into account and which are not.

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We urge your agency to adopt a policy that will bring an end to the hazardous health trends California is currently experiencing. Clear policies from INS and the Department of State that are sensitive to these health concerns is the only answer.

Sincerely,

Irwin D. Staller, M.P.H.,
Executive Director

IDS:alg

cc: Chris Jenning, The White House
Dennis Hayashi, Department of Health and Human Service

San Francisco Community Clinic Consortium

501 Second Street, Suite 120, San Francisco, CA 94107 (415) 243-3400, fax (415) 243-0525

VIA FACSIMILE - (202) 514-4623

October 15, 1998

Ms. Doris Meissner, Commissioner
US Department of Justice
Immigration and Naturalization Service
425 I Street, NW
Washington, D.C. 20536

RE: "Public Charge" Determinations

Dear Commissioner Meissner:

On behalf of the San Francisco Community Clinic Consortium, I am writing to urge your office to adopt policies that clarify the impact of the receipt of government-sponsored health care assistance on an individual's application for permanent residency and adjustment of status. The current confusion over whether government assistance programs will or will not have immigration-related consequences has resulted in fear among eligible immigrants in accessing necessary services, including health care services. Unwillingness to seek health care services or to enroll in government-sponsored health care programs creates a public health danger. In addition, California community health centers are also experiencing a growth in uncompensated care that we believe is tied to this fear and that threatens to destabilize California's safety net providers.

The San Francisco Community Clinic Consortium is an alliance of nine private, nonprofit partner health clinics that provide health care for over 65,000 uninsured, underinsured and publicly insured men, women and children.

I am aware of several letters from you that state a general policy regarding the use of Healthy Families benefits and any potential immigration consequences. Unfortunately, it is difficult for us to alleviate the extreme fear that currently exists without being able to provide a clear and official policy statement from INS. We urge you to issue an official policy regarding public charge determinations and further urge that the policy include the following recommendations:

- "Public charge" determinations must exclude non-cash assistance, such as Medicaid and State Children's Health Insurance Programs. This is consistent with the recent letters from you clarifying that receipt of public benefits by United States Citizen children will not be counted against the parent applying for residency, as long as the assistance is not the sole means of support for the family. In addition, this policy will ensure that eligible families do not fear using necessary health care benefits.

- Ensure that the INS policy makes clear that local INS personnel will not ask immigrant applicants about the receipt of non-cash assistance, including health care benefits. This is critical in ending the confusion regarding current INS "public charge" determination. An immigrant who is asked a general question regarding the use of public benefits and who is later denied legal permanent residency status based on a "public charge" consideration will not know which benefits were taken into consideration. An official policy is meaningless unless it is understood at an individual applicant's level. This understanding only comes with questions which make clear which benefits are taken into account and which are not.

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- Exclude past, temporary receipt of benefits from a "public charge" determination. To penalize an individual for receiving emergency Medi-Cal for a non-chronic condition in a prospective consideration of who is likely to become a "public charge" is simply unjustifiable especially if one considers the adverse public health consequences that the lack of clarity on this issue has already caused.

We urge your agency to adopt a policy that will bring an end to the hazardous health trends California is currently experiencing. Clear policies from INS and the Department of State that are sensitive to these health concerns are the only answer.

Sincerely,

John Gressman
Executive Director

cc: Chris Jenning, The White House
Dennis Hayashi, Department of Health and Human Services

MARIN COMMUNITY CLINIC

ACCESSIBLE HEALTHCARE

October 16, 1998

Secretary Madeleine K. Albright
Department of State
2201 C Street
Washington, DC 20520

Subject: :Public Charge Determinations

Dear Secretary Albright:

As a representative of Marin Community Clinic, I am writing to urge your office to adopt policies that clarify the impact of the receipt of government-sponsored, health care assistance on an individual's application for permanent residency and adjustment of status. The current confusion on which government assistance programs will or will not have immigration consequences has resulted in fear among eligible immigrants in accessing necessary services including health care services. Unwillingness to seek health care services or to enroll in government-sponsored health care programs creates a public health danger. In addition, California community health centers are also experiencing a growth in uncompensated care that we believe is tied to this fear and that threatens to destabilize California's safety net providers. At Marin Community Clinic, over one-third of infants born in Marin fail to maintain Medi-Cal benefits at 6 months. Parents tell us they are concerned about the effect that enrolling in government sponsored programs may have on their family's immigration status. As a result of this, the number of uninsured patients is growing 5 times faster than the growth of the patient population as a whole.

I am aware of several letters from Doris Meissner that state a general policy regarding the use of Healthy Families benefits and any potential immigration consequences. Unfortunately, it is difficult for us to alleviate the extreme fear that currently exists without being able to provide a clear and official policy statement from INS. We urge you to issue an official policy regarding public charge determinations and further urge that the policy include the following recommendations:

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415 461 4229

In addition, this policy will ensure that eligible families do not fear using necessary health care benefits.

- Ensure that the INS policy makes clear that local INS personnel will not ask immigrant applicants about the receipt of non-cash assistance including health care benefits. This is critical in ending the current confusion regarding current INS "public charge" considerations. An immigrant, who is asked a general question regarding the use of public benefits and who is later denied legal permanent residency status based on a "public charge" determination, will not know which benefits are taken into consideration. An official policy is meaningless unless it is understood at an individual applicant's level. This understanding only comes with questions which make clear which benefits are taken into account and which are not.

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We urge your agency to adopt a policy that will bring an end to the hazardous health trends California is currently experiencing. Clear policies from INS and the Department of State that are sensitive to these health concerns is the only answer.

Respectfully,

Nance Rosencranz
Executive Director

cc: Chris Jenning, The White House
Dennis Hayashi, Department of Health and Human Service

National Health Services, Inc.

Our Mission "Health for All"

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Delano, CA 93215
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FAX (805) 721-8944

FAX TRANSMITTAL

FAX #: **(202) 456-5557**

DATE: **October 15, 1998**

TO: **Chris Jennings**

COMPANY: **The White House**

FROM: **Wagih H. Michael, Executive Director**
FAX# 805-764-6311

NO. OF PAGES **3** *(Including Cover Sheet)*

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COMMENTS:

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October 15,1998

Ms. Doris Meissner, Commissioner
US Department of Justice
Immigration and Naturalization Service
425 "I" Street, NW
Washington DC 20536

RE: "Public Charge" Determinations

Dear Commissioner Meissner:

As a representative of National Health Services, Inc., I am writing to urge your office to adopt policies that clarify the impact of the receipt of government-sponsored, heath care assistance on an individual's application for permanent residency and adjustment of status. The current confusion on which government assistance programs will or will not have immigration consequences has resulted in fear among eligible immigrants in assessing necessary services including health care services. Unwillingness to seek health care services or to enroll in government-sponsored health care programs creates a public health danger. In addition, California community health centers are also experiencing a growth in uncompensated care that we believe is tied to this fear and that threatens to destabilize California's safety net providers.

I am aware that state a general policy regarding the use of Healthy Families benefits and any potential immigration consequences. Unfortunately, it is difficult for us to alleviate the extreme fear that currently exists without being able to provide a clear and official policy statement from INS. We urge you to issue an official policy regarding public charge determinations and further urge that the policy include the following recommendations:

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for the family. In addition, this policy will ensure that eligible families do not fear using necessary health care centers.

- Ensure that the INS policy makes clear that local INS personnel will not ask immigrant applicants about the receipt of non-cash assistance including health care benefits. This is critical in ending the current confusion regarding current INS "public charge" considerations. An immigrant, who is asked a general question regarding the use of public benefits and who is asked a general question regarding the use of public benefits and who is later denied legal permanent residency status based on a "public charge" determination, will not know which benefits were taken into consideration. An official policy is meaningless unless it is understood at an individual applicant's level. This understanding only comes with questions which make clear which benefits are taken into account and which are not.

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We urge your agency to adopt a policy that will bring an end to hazardous health trends California is currently experiencing. Clear policies from INS and the Department of State that are sensitive to these health concerns is the only answer.

Sincerely,

Wagih H. Michael, Ph.D.
Executive Director

cc: Chris Jenning, The White House
Dennis Hayashi, Department of Health and Human Services

Public Charge

SOUTHWEST COMMUNITY HEALTH CENTER

October 15, 1998

Secretary Madeleine K. Albright
Department of State
2201 C. Street
Washington, DC 20520

Dear Secretary Albright:

On behalf of the Board of Directors of the Southwest Community Health Center, I am writing to urge you to adopt policies that clarify the impact of receipt of government sponsored health care assistance on an individual's application for permanent residency and adjustment of status. The current confusion on which government assistance programs will or will not have immigration consequences has resulted in fear among eligible immigrants in accessing necessary health care services. Avoidance of the health care services by immigrants with communicable diseases creates a public health concern for all of our residents. California community health centers such as ours are experiencing a growth in uncompensated care that clearly appears to be linked to the fear of adverse "public Charge" determinations. Continued growth in uncompensated care threatens to destabilize the safety net providers in one of the states receiving the highest level of immigration.

Several letters from Commissioner Meissner of the INS have stated a policy regarding the use of Healthy Families (CHIP) benefits and any potential immigration consequences. The policy does not go far enough to remove the fear of receiving necessary health care. We urge you to issue a firm official policy regarding public charge determinations that will include:

Exclude non-cash health care assistance such as Medicaid and Children' Health Insurance Programs from all public charge determinations.

Ensure that the INS policy makes clear that INS personnel will not question applicants about receipt of non-cash health care assistance.

Exclude benefits received by family members other than the applicant in a public charge determination. Seeking health care services for ones children should not be a decision that may impact the stability of an entire family.

Exclude past, temporary receipt of non-cash benefits from public charge determinations. The acceptance of emergency Medicaid services in a life-threatening situation in a prospective consideration is simply not justifiable.

A firmly stated agreement between the State Department and the Justice Department (INS) on the policies that are to be followed by the INS at all levels. The casual jeopardizing of public health needs to be stopped wherever possible.

751 Lombardi Court, Suite B • Santa Rosa • California 95407 tel: 707-547-2222 • fax: 707-547-2230

We urge you to adopt a policy that will bring an end to the hazardous health trends California is currently experiencing. This has to be a problem common to all of the Border States, and isn't just peculiar to California. The only answer to these problems is clear policies from your agency and the INS that are sensitive to the health concerns of both new immigrants and all present residents.

Sincerely,

William D. Hughes
Executive Director

cc: Chris Jennings, The White House
Dennis Hayashi, Department of Health and Human Service
Elia Gallardo, CPCA

BACKGROUND ON WHY MEDICAID ENROLLMENT SHOULD NOT BE INCLUDED IN PUBLIC CHARGE DETERMINATIONS

October 13, 1998

ISSUE: Recent changes in the welfare and immigration laws, along with changes in the Medicaid program, have created some confusion about how Medicaid should be considered in the determination of whether an individual is a "public charge." There have been documented instances in which individuals have been denied re-entry to the U.S. because they received Medicaid. Moreover, individuals have been told that receipt of Medicaid will have a negative effect on their immigration status. These cases have translated into widespread concern in the immigrant community about legal receipt of Medicaid, even where the beneficiary is a citizen child. The concern about immigration risk associated with the legal use of Medicaid interferes with the President's goal of increasing the number of insured people in this country and improving public health.

RECOMMENDED POLICY: The proposal is for the INS and the State Department to issue guidance that past or current use of Medicaid or the Children's Health Insurance Program (CHIP) is not to be considered in determining whether a person is a public charge, except where an individual has received institutionalized care funded by Medicaid.

The Department of Justice's Office of Legal Counsel has determined that the Attorney General and Secretary of State have broad discretion in determining what factors to consider in making a "public charge" determination. A decision to exclude past or current receipt of Medicaid from the public charge determination -- except in the cases of institutionalization -- is therefore legally permissible under the Immigration and Naturalization Act (INA).

Given this broad discretion, the Administration wishes to exercise it to avoid the harm that considering Medicaid would cause.

While serving the public policy goal of increasing the number of people with medical insurance and improving public health, the proposed policy would not attract indigent immigrants to the U.S. Since welfare reform, immigrants are generally denied access to Medicaid and CHIP for the first five years they are in the country and their sponsors are required to sign a legally binding affidavit of support.

RATIONALE: There are three reasons for this proposed policy: the public health imperative to insure people through Medicaid and CHIP; the ability to identify a public charge through other means; and the adverse effects that result from the current, ambiguous guidance.

Public health value of Medicaid and CHIP

- **Medicaid is a cost-effective health insurance program**. It covers the cost of preventive, primary and acute health care as well as long-term care for those who need it. By providing health insurance through Medicaid, the Federal and State governments protect local, publicly-funded hospitals and clinics from having to absorb the high costs of caring for uninsured patients. By law, hospitals cannot refuse to treat patients with medical emergencies, even if they have no insurance. Medicaid obviates some of this emergency care by providing preventive and timely basic health care.

  - A recent study found that insured children are less likely to be sick as newborns, more likely to be immunized, and more likely to receive treatment for illnesses such as recurrent ear infections and asthma (Institute of Medicine, 1998).

  - Prenatal care is essential to the health of both mothers and children. Studies have found infant mortality was lower when mothers use prenatal care, even holding constant parental age, race, and educational status (e.g., Hoyert, 1996).

- **Medicaid mostly provides health insurance to low-income children, their parents and pregnant women.** Eligibility for Medicaid can be divided into three categories:–

  - First, Medicaid covers low-income children, their parents, and pregnant women. In most states, this coverage is extended to people above poverty, in recognition of the public health value of providing preventive and prenatal care services to working as well as children and pregnant women in non-working families. Nearly 24 million (two-thirds) of Medicaid beneficiaries are children, their parents or pregnant women (HCFA, 1998). Almost 40 percent of all births in the U.S. are covered by Medicaid (NGA, 1997).

  - Second, Medicaid covers people with disabilities and low-income elderly who are on Supplemental Security Income (SSI). It also covers Medicare premiums and cost sharing for certain low-income Medicare beneficiaries. About 9 million low-income, non-institutionalized disabled and elderly people are on Medicaid (HCFA, 1998).

  - Third, Medicaid covers people who are impoverished due to the high costs of institutional nursing home care. About 1 million institutionalized people are covered by Medicaid (HCFA, 1998).

  In the past decade, eligibility for Medicaid has moved away from its traditional link with welfare cash assistance and towards a pure income standard. Because nearly half of the people covered by Medicaid work or have a family member who works at least part of the year, Medicaid health insurance coverage cannot be considered a welfare program (CPS, 1998).

- **CHIP only covers children in working families**. In 1997, the President and Congress created the Children's Health Insurance Program (CHIP). Its intent is to cover uninsured children in families with too much income to qualify for Medicaid but too little to afford private coverage. By definition, children insured through CHIP are not public charges since their families must have income above the poverty limit to qualify. [note: in the remainder of this paper, "Medicaid" is intended to include CHIP]

Why Medicaid should not be considered in "public charge" determinations

- For most beneficiaries, Medicaid coverage provides only preventive and basic health care coverage if the person becomes unexpectedly ill. In other words, Medicaid is an insurance program, not a welfare transfer program of the type traditionally considered in public charge determinations.

- People with disabilities and low-income elderly people usually become eligible for Medicaid because they receive Supplemental Security Income (SSI). Receipt of SSI can be considered in the public charge determination. Considering Medicaid adds nothing to the analysis.

- The INA already requires health to be taken into consideration in public charge determinations. Individuals in poor health who seek to enter the U.S. or adjust their status would continue to be subject to a public charge determination based on their health. Since health status by itself is not an eligibility criteria for Medicaid, considering Medicaid in determinations again is superfluous.

- The proposed change would allow people so ill or disabled that they are institutionalized to be determined to be a public charge if covered by Medicaid. People who are institutionalized receive room and board under Medicaid, and thus these people can be considered public charges.

Adverse effects of using Medicaid in the determination of public charge

- **Fear that receiving Medicaid will affect immigration status is a major reason why eligible immigrants do not apply**. A survey in Los Angeles found that the number-one reason why eligible immigrant children are not enrolled in Medicaid is for fear of the INS (Mejia, 1997). The U.S. General Accounting Office (GAO, 1998) cited the actual and rumored use of Medicaid in determining whether a person is a public charge as a deterrent to enrollment of eligible immigrant families.

- **Lack of insurance is highest among Hispanic people who comprise most immigrant families.** In 1997, nearly 30 percent of Hispanics were uninsured -- comprising nearly one in five of America's uninsured. The Census also reports that nearly 20 percent of naturalized citizens, over one-third of foreign born people and 44 percent of non-citizens were uninsured, compared to 14 percent of native born Americans (Bennefield, 1998).

- **Many children legally eligible for Medicaid remain uninsured.**

  - **Over one million uninsured children eligible for Medicaid live in immigrant families.** Nationwide, while 90 percent of uninsured Medicaid-eligible children were U.S. born, more than one-third of these uninsured children live in immigrant families (U.S. GAO, 1998).

  - **In Florida, migrant farmworker children are at risk.** The East Coast Migrant Headstart Centers found that over 300 of the 980 children served -- almost all of whom are U.S. citizens with immigrant parents -- were eligible for but not enrolled in Medicaid. The most common reason cited by the parents for not enrolling children was fear that receipt of Medicaid would adversely affect their immigration status. (Harmatz, 1998).

  - **Nearly 50 percent drop in California's Medicaid enrollment of citizen children with non-citizen parents**: In California, the number of citizen children with non-citizen parents enrolled in Medicaid dropped by 48 percent between January 1996 and 1998 -- despite the fact that the number of such children increased by 6 percent over the same time period. (Zimmerman & Fix, 1998).

- **Prevents prenatal care**:

  - While about 87 percent of non-Hispanic white pregnant women received prenatal care, only 72 percent of Hispanic pregnant women did in 1996 (NCHS, 1998).

  - In Decatur County, Georgia, only four pregnant women out of 10,000 migrant farmworkers and their families enrolled in the state's Perinatal Case Management Program (Schlosberg & Wiley, 1998).

  - In Los Angeles, a pregnant woman married to a U.S. citizen did not apply for Medicaid even though she was eligible for fear that it would affect her permanent residency. Not only did she not receive prenatal care covered by Medicaid, but she developed pregnancy-related diabetes. Uncontrolled, this condition poses a serious health risk and could cost the hospital caring for the mother and child thousands of dollars in uncompensated care costs. (Schlosberg & Wiley, 1998).

- **Rubella outbreak in NY**: In December 1997, the nation's largest outbreak of rubella occurred in Westchester, NY. The epidemic spread through the Hispanic immigrant community among people who had not been vaccinated for the disease. Public health officials believe that one of the major reasons for this lack of vaccinations was the fear that use of the health department might adversely affect immigration status (Schlosberg & Wiley, 1998).

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COMMUNITY CLINIC ASSOCIATION OF LOS ANGELES COUNTY

☒ Urgent ☐ FYI

FAX COVER SHEET

DATE: _____

TO: CHRIS JENNING

WHITE HOUSE

ORGANIZATION: _____

FAX#: 202-456-5557 **PHONE#:** _____

FROM: _____

COMMENTS: _____

Number of pages to follow: _____

0010 Sepulveda Blvd. Suite 202 Los Angeles, CA 90045
(310) 649-7350 Fax (310) 649-7357
Internet: ccalac@interserv.com

CCALAC
COMMUNITY CLINIC ASSOCIATION OF LOS ANGELES COUNTY

October 15, 1998

Ms. Doris Meissner, Commissioner
U.S. Department of Justice
Immigration and Naturalization Service
425 I Street, NW
Washington, DC 20536

Subject: "Public Charge" Determinations

Dear Commissioner Meissner:

On behalf of the thirty six community clinics in our Association I am writing to urge your office to adopt policies that clarify the impact of the receipt of government-sponsored, health care assistance on an individual's application for permanent residency and adjustment of status. The current confusion on which government assistance programs will or will not have immigration consequences has resulted in fear among eligible immigrants in accessing necessary services including health care services. Unwillingness to seek health care services or to enroll in government-sponsored health care programs creates a public health danger. In addition, California community health centers are also experiencing a growth in uncompensated care that we believe is tied to this fear and that threatens to destabilize California's safety net providers. Numerous clinics report to us that they serve many patients who would be eligible for government funded programs, but who will not apply due to this fear.

I am aware of several letters from you that state a general policy regarding the use of Healthy Families benefits and any potential immigration consequences. Unfortunately, it is not possible for us to alleviate the extreme fear that currently exists without being able to provide a clear and official policy statement from INS. We urge you to issue an official policy regarding public charge determinations and further urge that the policy include the following recommendations:

- "Public charge" determinations must exclude non-cash assistance, such as Medicaid and State Children's Health Insurance Programs.

8610 Sepulveda Blvd Suite 202 Los Angeles, CA 90045
(310) 649-7950 Fax (310) 649-7357

This is consistent with the recent letters from you clarifying that receipt of public benefits by United States Citizen children will not be counted against the parent applying for residency as long as the assistance is not the sole means of support for the family. In addition, this policy will ensure that eligible families do not fear using necessary health care benefits.

- Ensure that the INS policy makes clear that local INS personnel will not ask immigrant applicants about the receipt of non-cash assistance including health care benefits. This is critical in ending the confusion regarding current INS "public charge" considerations. An immigrant, who is asked a general question regarding the use of public benefits and who is later denied legal permanent residency status based on a "pubic charge" determination, will not know which benefits were taken into consideration. An official policy is meaningless unless it is understood at an individual applicant's level. This understanding only comes with questions which make clear which benefits are taken into account and which are not.
- Exclude benefits received by family members other than the applicant in a public charge determination. Seeking health care or other benefits should not be a decision that may or may not impact the stability of an entire family. It is unreasonable and wrong to make the access of health care such a difficult decision.
- Exclude past, temporary receipt of benefits from a "public charge" determination. To penalize an individual for receiving emergency Medi-Cal for a non-chronic condition in a prospective consideration of who is likely to become a "public charge" is simply unjustifiable especially if one considers the adverse public health consequences that the lack of clarity on this issue has already caused.

We urge your agency to adopt a policy that will bring an end to the hazardous health trends California is currently experiencing. Clear policies from INS and the Department of State that are sensitive to these health concerns is the only answer.

Sincerely,

Mandy Johnson

Mandy Johnson, Executive Director

cc: Chris Jenning, The White House
Dennis Hayashi, Department of Health and Human Service

Y:Legislative Alert letter 10.15.98

COMMUNITY CLINIC ASSOCIATION OF LOS ANGELES COUNTY

October 15, 1998

Secretary Madeleine K. Albright
Department of State
2201 C. Street
Washington, DC 20520

Subject: "Public Charge" Determinations

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Mandy Johnson, Executive Director

cc: Chris Jenning, The White House
Dennis Hayashi, Department of Health and Human Service

FAMILY HEALTHCARE NETWORK

1107 W. Poplar Avenue, Porterville, CA 93257, (209) 781-7242
Fax (209) 782-1418

Fax

To: Chris Jennings **From:** Harry L. Foster

Fax: (202) 456-5557 **Pages:** 5

Phone: **Date:** 10-15-98

Re: **cc:**

☒ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• **Comments:**

FAMILY HEALTHCARE

October 15, 1998

Secretary Madeleine K. Albright
Department of State
2201 C. Street
Washington, DC 20520

Subject: "Public Charge" Determinations

Dear Secretary Albright:

As a representative of Family HealthCare Network, I am writing to urge your office to adopt policies that clarify the impact of the receipt of government-sponsored, health care assistance on an individual's application for permanent residency and adjustment of status. The current confusion on which government assistance programs will or will not have immigration consequences has resulted in fear among eligible immigrants in accessing necessary services including health care services. Unwillingness to seek health care services or to enroll in government-sponsored health care programs creates a public health danger. In addition, California community health centers are also experiencing a growth in uncompensated care that we believe is tied to this fear and that threatens to destabilize California's safety net providers.

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Harry L. Foster
Chief Executive Officer

cc: Chris Jenning, The White House
Dennis Hayashi, Department of Health and Human Service

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October 15, 1998

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CORPORATE
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Harry L. Foster
Chief Executive Officer

cc: Chris Jenning, The White House
Dennis Hayashi, Department of Health and Human Service

THE CLINTON ADMINISTRATION TAKES NEW ACTION TO ASSURE IMMIGRANT FAMILIES ACCESS TO HEALTH CARE AND OTHER BENEFITS
New Regulations State that Receipt of Medicaid, Food Stamps, or Other Public Benefits Will Not Affect Immigration Status

May 25, 1999

Today, the Vice President will release new regulations assuring families that enrollment in Medicaid or the new Children's Health Insurance Program (CHIP) and the receipt of other critical benefits, such as food stamps, child care services, and assistance with the payment of electric bills won't affect their immigration status. In addition, Vice President Gore will direct the Department of Health and Human Services, the State Department, and the Department of Justice to send over XX letters to their regional offices, state offices, and program grantees in order to educate them about these new regulations. These proposed rules, effective immediately, are a significant step forward in promoting the public health and ensuring that thousands of children and families get the health care and other social support they need.

WIDESPREAD CONFUSION ABOUT CURRENT POLICY PREVENTS LEGAL IMMIGRANTS FROM ACCESSING CRITICAL BENEFITS. Recent immigration and welfare reform laws have generated widespread public confusion about whether legal immigrants receiving certain publicly funded benefits can be deemed to be a "public charge" who is or may become primarily dependent on the government. An individual determined to be a public charge may be denied entry into the United States, denied American citizenship, or deported. Recent studies indicate that the fear of being considered a public charge has deterred legal immigrant families from enrolling their children in important health programs such as Medicaid and the new Children's Health Insurance Program, preventing them from receiving immunizations, treatment for communicable diseases, and emergency care, as well as obtaining other vital assistance such as disaster relief and school lunch.

NEW STEPS ENSURE THAT LEGAL IMMIGRANTS WILL BE ABLE TO RECEIVE CRITICAL HEALTH CARE AND SOCIAL SERVICES WITHOUT FEAR. These new regulations define "public charge" for the first time and provide clear and consistent guidance that Federal agencies cannot use the receipt of health care or other critical social support benefits to deny an individual's admission to the United States, application for citizenship, or request to remain in the country. Eligible legal immigrants can now receive the following benefits without fear of jeopardizing their immigration status:

- *Health insurance under Medicaid and CHIP (except for institutionalization for long term care).* These new regulations make it possible for uninsured legal immigrants to access the critical health services they need without fear. The Census Bureau reports that nearly 20 percent of naturalized citizens, over one-third of foreign born people, and 44 percent of non-citizens were uninsured, compared to 14 percent of native born Americans.

- *Access to immunization and treatment for communicable diseases.* These new regulations

take new steps to protect the health of all Americans by ensuring legal immigrants can access to free immunizations and testing and treatment of symptoms of communicable diseases, such as rubella or tuberculosis, without fear. After a recent outbreak of rubella in New York, public health officials indicated that one of the major reasons that people had not been vaccinated was the fear that use of health department services would affect their immigration status.

- *Access to essential nutrition programs.* These new regulations remove the current perceived barriers to receiving critical nutrition benefits, 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. Access to these benefits is extremely important for legal immigrant children. Recent studies by USDA and the Census Bureau indicate that Hispanic families with children have among the lowest food security rates (70%), placing them at risk for malnutrition.

- *Other supports for families.* These regulations make it possible for eligible legal immigrants to access important social supports for working families, such as child care services, housing assistance, energy assistance, emergency disaster relief, foster care and adoption assistance, transportation vouchers, educational assistance, and job training programs.

BUILDING ON THE CLINTON ADMINISTRATION'S STRONG COMMITMENT TO INSURING LOW INCOME FAMILIES AND PROMOTING THE PUBLIC HEALTH.
The new regulations the Vice President is unveiling today of a comprehensive campaign by the Clinton-Gore Administration to help families obtain health care, which includes:

- *Providing health insurance to legal immigrant children, pregnant women, and individuals with disabilities.* In January, the Vice President announced a new proposal to provide health coverage to low-income legal immigrant children and pregnant women who entered the country after August 22, 1996. It would also provide insurance to legal immigrants who entered the country after August 22, 1996 and became disabled after entering the country. The proposal, part of the Administration's FY 2000 budget, would provide critical health insurance to approximately 55,000 children and 23,000 women by FY 2004 as well as 54,000 immigrants who become disabled after entering the U.S.

- *Creation of the Children's Health Insurance Program.* The President, with bipartisan support from the Congress, created the Children's Health Insurance Program (CHIP). The Balanced Budget Act of 1997 allocated $24 billion dollars over the next five years to extend health care coverage to uninsured children through State-designed programs. States project that they will ensure 2.5 million children when their new CHIP programs are fully implemented.

- *Launching the Insure Kids Now Campaign.* This new campaign will engage a broad-based, bipartisan, public-private coalition to use a variety of means to educate and assist families in

insuring their children. Initial activities include launching a nationwide, toll-free number set up by the National Governors' Association in partnership with the Administration and Bell Atlantic to provide families with essential information about Medicaid and CHIP; placing the toll-free number on corporate products; airing public service announcements on TV and radio; enlisting grass-roots organizations to get the word out; and stepping up activities by over 10 Federal agencies that interact with working families.

April 26, 1999

NOTE TO: Bruce Reed
Elena Kagan
Chris Jennings
Cynthia Rice
Jeanne Lambrew
Devorah Adler

FROM: Irene Bueno

Re: **DRAFT INS FIELD GUIDANCE ON PUBLIC CHARGE**

Please review the attached INS Field Guidance on Public Charge that will be published and distributed to the INS Field offices along with the proposed regulation. Note that a section on refugees is pending DOJ approval and is forthcoming. I will forward that section to you when I receive it.

Please give me your comments by the end the week, April 30 or let me know if you have any questions.

Thanks.

DRAFT
4/22/99

96 Act ***
HQ *******

MEMORANDUM FOR ALL REGIONAL DIRECTORS
ALL SERVICE CENTER DIRECTORS

FROM: MICHAEL A. PEARSON
EXECUTIVE ASSOCIATE COMMISSIONER,
FIELD OPERATIONS

SUBJECT: Public Charge: INA Sections 212(a)(4) and 237(a)(5)

This memorandum provides guidance concerning the public charge ground of inadmissibility, section 212(a)(4) of the Immigration and Nationality Act (INA), and the related deportation charge under section 237(a)(5) of the INA. It also discusses the impact of these subsections on the new enforceable Affidavit of Support prescribed by the section 213A of the INA, established by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

IIRIRA and the recent welfare reform laws[1] have sparked public confusion about the relationship between the receipt of federal, state, and local public benefits and the meaning of "public charge" under the immigration laws. Accordingly, the Service is taking 2 steps to ensure the accurate and uniform application of law and policy in this area. First, the Service is issuing this memorandum which both summarizes longstanding law with respect to public charge and provides new guidance on public charge determinations in light of the recent changes in law. In addition, the Service is publishing a proposed rule for notice and comment that will for the first time define "public charge" and discuss evidence relevant to public charge determinations.

Although the definition of public charge is the same for both admission/adjustment and deportation, the standards applied to public charge adjudications in each context are significantly different and are addressed separately in this memorandum. After discussing the definition and standards for public charge determinations, the memorandum goes on to discuss exemptions from public charge determinations and particular types of benefits that may and may not be considered for public charge purposes, in addition to other issues.

1. Definition of "Public Charge"

The Service is publishing a rule for notice and comment that defines "public charge" for purposes of both admission/adjustment and deportation. That rule proposes that "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, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense."**

[1] The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, as amended by the Balanced Budget Act of 1997, Pub. L. 105-33; the Agricultural Research, Extension, and Education Reform Act of 1998, Pub. L. 105-185; and the Noncitizen Technical Amendments Act of 1998, Pub. L. 105-306.

Until the public has had an opportunity to comment on this proposed definition and a final rule is published, Service officers shall adopt this definition on an interim basis. Accordingly, officers should not initiate or pursue public charge deportation cases against aliens who receive only non-cash public assistance (other than institutionalization) during the period before a final rule is published. Similarly, officers should not place any weight on the receipt of non-cash public assistance (other than institutionaliization) with respect to determinations of inadmissibility on public charge grounds.

See section 6, below, for a more detailed discussion of particular types of benefits that may and may not be considered for public charge purposes before a final rule is published.

2. Admission and adjustment of status

Under INA section 212(a)(4), an alien seeking admission to the United States or seeking to adjust status to that of an alien lawfully admitted for permanent residence is inadmissible if the alien, "at the time of application for admission or adjustment of status, is likely at any time to become a public charge."[2] IIRIRA amended section 212(a)(4) of the INA to codify the factors relevant to a public charge determination. **Officers must consider, at a minimum, the alien's age, health, family status, assets, resources, and financial status, and education and skills when making a public charge inadmissibility determination.** Every denial order based on public charge must reflect consideration of each of these factors and specifically articulate the reasons for the officer's determination.

The most significant change to section 212(a)(4) under IIRIRA is the creation of a new affidavit of support (AOS), which, coupled with new section 213A, imposes on the sponsor a legally enforceable support obligation. The law requires that sponsors demonstrate that they are able to maintain the sponsored alien at an annual income of not less than 125 percent of the federal poverty level. The AOS requirement applies to all immediate relatives (including orphans), family-based immigrants, and those employment-based immigrants who will work for a relative or for a firm in which a U.S. citizen or lawful permanent resident (LPR) relative holds a 5 percent or more ownership interest. Immigrants seeking admission or adjustment of status in these categories are inadmissible under subparagraphs (C) and (D) of the modified section 212(a)(4), respectively, unless the appropriate sponsor has completed and filed a new AOS if the application for an immigrant visa or adjustment of status on or after December 19, 1997. Note that this requirement applies to these aliens even if, under the factors codified in section 212(a)(4)(B), the adjudicator would ordinarily find that the alien is not likely to become a public charge. The only exceptions from this requirement are for qualified battered spouses and children and for qualified widow(er)s of citizens, *if* these aliens have filed visa petitions on their own behalf. Where such an AOS has been filed on an alien's behalf, it should be considered along with the statutory factors in the public charge determination.

The standard for adjudicating inadmissibility under section 212(a)(4) has been developed in several Service, BIA, and Attorney General decisions and has been codified in the Service regulations implementing the legalization provisions of the Immigration Reform and Control Act of 1986. **These decisions and regulations, and section 212(a)(4) itself, create a "totality of the circumstances"**

[2] See Section 4 below on categories of aliens who are exempt from public charge determinations.

test.

In determining whether an alien is likely to become a public charge, Service officers should assess the financial responsibility of the alien by examining the "totality of the alien's circumstances *at the time of his or her application*. . . . The existence or absence of a particular factor *should never be the sole criterion* for determining if an alien is likely to become a public charge. The determination of financial responsibility *should be a prospective evaluation*" based on the alien's age, health, family status, assets, resources and financial status, education, and skills, among other factors.[3]

In addition, the Attorney General has ruled that "[s]ome specific circumstances, such as mental or physical disability, advanced age, or other fact reasonably tending to show that the burden of supporting the alien is likely to be cast on the public, must be present. A healthy person in the prime of life cannot ordinarily be considered likely to become a public charge, especially where he has friends or relatives in the United States who have indicated their ability and willingness to come to his assistance in case of an emergency."[4] Under the new AOS rules, all family-based immigrants (and some employment-based immigrants) will have a sponsor who has indicated an ability and willingness to come to the immigrant's assistance. An alien may be considered likely to become a public charge even if there is no legal obligation to reimburse the benefit-granting agency for the benefits or services received, in contrast to the standards for deportation, discussed below.[5]

Current receipt of cash benefits for income maintenance and current institutionalization

If at the time of application for admission or adjustment an alien is receiving a cash public benefit for income maintenance or is institutionalized for long-term care (as discussed in Section 6, below), that benefit should be taken into account under the totality of the circumstances test as one of the alien's "resources," along with the other statutory factors under section 212(a)(4)(B)(i) and any AOS. The alien should not be requested to repay the cost of any benefits received. Current receipt of non-cash benefits should not be taken into account under the totality of the circumstances test.

Past receipt of cash benefits for income maintenance and past institutionalization

Past receipt of cash income-maintenance benefits does not automatically make an alien inadmissible as likely to become a public charge, nor does past institutionalization for long-term care at government expense. Rather this history would be one of many factors to be considered in applying the totality of the circumstances test. In the case of an alien who has received cash income-maintenance benefits in the past or who has been institutionalized for long-term care at government expense, a Service officer determining admissibility should **assess the totality of the alien's circumstances at the time of the application** for admission or adjustment and **make a forward-looking determination** regarding the likelihood that the alien will become a public charge after admission or adjustment. The more time that has passed since an alien received cash benefits or was institutionalized, the less weight these factors will have as a predictor of future receipt. Also, the "length of time an applicant has received public

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[3] 8 C.F.R. § 245a.4(b)(11)(iv)(B), and see INA § 212(a)(4)(B). The federal courts have also endorsed this "totality of the circumstances" test. See, e.g., Zambrano v. INS, 972 F.2d 1122 (9th Cir. 1992), *judgment vacated on other grounds, 509 U.S. 918 (1993).*

[4] Matter of Martinez-Lopez, 10 I&N 409, 421-422 (AG, Jan. 6, 1964).

[5] Matter of Harutunian, 14 I. & N. Dec. 583 (BIA 1974) (interpretating § 212(a)(15), recodified as § 212(a)(4)).

cash assistance is a significant factor."[6] The longer an alien has received cash benefits in the past, the stronger the implication that the alien is likely to become a public charge. The negative implication of past receipt of such benefits or past institutionalization, however, may be overcome by positive factors in the alien's case demonstrating an ability to be self-supporting. For instance, a work-authorized alien who has current full-time employment or an AOS should be found admissible despite past receipt of cash public benefits, unless there are other adverse factors in the case.

Past receipt of non-cash benefits should not be taken into account under the totality of the circumstances test.

Repayment of public benefits

IIRIRA did not create any requirement that aliens repay benefits received in the past in order to avoid being found inadmissible on public charge grounds, nor has such a requirement existed in the past. Accordingly, officers should not instruct or suggest that aliens must repay benefits previously received as a condition of admission or adjustment, and they should not request proof of repayment as a condition for finding the alien admissible to the United States. (See INS Memorandum, "Public Charge: INA Sections 212(a)(4) and 237(a)(5) – Duration of Departure for LPRs and Repayment of Public Benefits," dated December 16, 1997, for further discussion.)

Repayment is relevant to the public charge inadmissibility determination only in very limited circumstances. If at the time of application for admission or adjustment of status the alien has an outstanding public debt for a cash benefit or the costs of institutionalization that would render the alien deportable on public charge grounds under section 237(a)(5) of the INA, then the alien is inadmissible. **Only a debt that satisfies the three-part test under section 237(a)(5), described below, will render an alien a public charge upon admission.** If the debt is paid, then the alien will no longer be inadmissible based on the debt, and the usual totality of the circumstances test would apply. While the Service may not demand that an alien repay a public debt which meets the three-part test, it may inform an alien that if the alien does not repay the debt, he or she will continue to be inadmissible to the United States. Adjudicators should make sure also to inform aliens that even if they pay the debt, they may still be determined to be inadmissible as an alien likely to become a public charge under the totality of the circumstances test.

If an INS officer finds evidence of possible benefit fraud in the course of performing his or her immigration duties, that information should be forwarded through official channels to the appropriate benefit-granting agency for possible investigation and enforcement action. In such cases, absent a determination of fraud by the benefit-granting agency, immigration benefits to which the alien is otherwise entitled should not be withheld or denied.

3. Public charge determinations - deportation

The determination of whether an alien is deportable as a public charge is quite different from the determination of whether an alien is likely to become a public charge under section 212(a)(4). Section 237(a)(5) of the INA states that "[a]ny alien who, within 5 years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable." This

[6] 8 CFR § 245a.2(k)(4).

section requires a two-step determination. First, the Service must determine whether the alien has become a public charge within five years after the date of entry. Second, if the alien has become a public charge, then the Service must determine whether the alien has demonstrated that the circumstances that caused the alien to become a public charge arose after the alien's entry into the United States.[7] An alien who can make such a showing is not deportable as a public charge.

With respect to whether an alien has become a public charge, the Attorney General has determined that the mere receipt of a public benefit by an alien does not make an alien a public charge for purposes of deportation under section 237(a)(5). Rather, in Matter of B, 3 I. & N. Dec. 323 (BIA and AG 1948),[8] the Attorney General established a strict three-part test to determine if an alien has become a public charge. In order for an alien to become a public charge under section 237(a)(5), the following 3 requirements must be met:

1) The state or other government entity that provides the benefit must, by law, impose a charge or fee for the services rendered to the alien. In other words, the alien or designated relatives or friends must be legally obligated to repay the benefit-granting agency for the benefits or services provided. **If there is no reimbursement requirement, and if the government does not have the legal authority to sue in court to recover payment, the alien cannot be said to be a public charge.**

2) **The responsible benefit agency officials must make a demand for payment for the benefit or services** from the alien or other persons legally responsible for the debt under federal or state law (e.g., the alien's sponsor).

3) **The alien and other persons legally responsible for the debt fail to repay after a demand has been made.**

The demand for repayment must be made within 5 years of an alien's entry in order to render the alien deportable as a public charge.[9] In addition, the Service has determined that, in order for an alien to become deportable as a public charge as a result of the failure of the sponsor to repay the agency, the benefit-granting agency must take all available actions to collect from the sponsor. This includes filing an action in the appropriate court and taking all steps available under law to enforce any judgment against the sponsor.

Deportations based on public charge grounds have been rare, and the new immigration and welfare laws are not likely to change this. First, for aliens who are not sponsored under the new AOS, it is unlikely that there will be a legal obligation to repay public benefits or that the benefit-granting agency will make a demand for repayment. Thus, just as in the past, the first 2 prongs of the Matter of B test will generally not be satisfied. Only aliens who apply for immigrant visas or adjustment of status on or after December 19, 1997, may be sponsored under the new, enforceable AOS, which could satisfy the

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[7] Under the re-entry doctrine, the 5-year period starts again if, within the alien's first 5 years after entry, he or she has a "meaningful departure" from the United States and then returns.

[8] While this decision concerned the public charge provision of the 1917 Act, the test established continues to be valid under current law, which is substantially the same as the 1917 law. See Matter of L, 6 I. & N. Dec. 349 (BIA 1954), and Matter of Harutunian, 14 I. & N. Dec. 583 (BIA 1974).

[9] Matter of L, 6 I. & N. Dec. 349 (BIA 1954).

standards for deportation under Matter of B. However, under the new welfare reform laws, these same aliens will generally be barred from receiving federal means-tested public benefits for the first 5 years after admission or adjustment – the critical period for purposes of deportability. In addition, under the "deeming" rules, the sponsor's income will be attributed to the alien in assessing his or her eligibility to receive a means-tested benefit, which would normally raise the alien's income over the benefit eligibility threshold. Only if an immigrant receives a cash benefit for income-maintenance within 5 years of entry or is institutionalized for long-term care (despite the eligibility limitations), there is a demand for repayment by the benefit-granting agency, and the sponsor or other responsible party fails to repay, can the immigrant become deportable as a public charge. However, even in this case, the alien must be given an opportunity to prove that he or she became a public charge for causes that arose after entry. If the alien can make such a showing, he or she will not be deportable as a public charge. Thus, the Service is unlikely to see a significant increase in cases of deportability on public charge grounds.

4. Exemptions from public charge determinations

Under the new laws, refugees and asylees remain exempt from public charge determinations for purposes of admission and adjustment of status pursuant to sections 207, 208, and 209 of the INA. Similarly, Amerasian immigrants are exempt from the public charge ground of inadmissibility for their initial admission.[10] In addition, various statutes contain exceptions to the public charge ground of inadmissibility for aliens eligible for benefits under their provisions, including the Cuban Adjustment Act (CAA), the Nicaraguan Adjustment and Central American Relief Act (NACARA), and the Haitian Refugee Immigration Fairness Act (HRIFA).[11] These laws provide avenues of adjustment for certain aliens – including Cuban/Haitian entrants,[12] who remain eligible for many public benefits under welfare reform – without subjecting them to screening as potential public charges.

Most LPRs who have been outside the United States for 180 days or less are not applicants for admission and therefore are not subject to the grounds of inadmissibility, pursuant to section 101(a)(13)(C) of the INA.[13] Accordingly, absent an indication that they may be applicants for admission, such LPRs should not routinely be questioned on issues related to the likelihood that they will become a public charge.

[Add discussion of refugees who adjust to LPR status, Cuban/Haitian entrants, and Amerasians who are applicants for admission pursuant to section 101(a)(13)(C).]

Under section 249 of the INA, which allows aliens who have been in the United States since January 1, 1972, to "register" as LPRs, public charge is not a factor in determining eligibility. Receipt of public

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[10] Amerasian immigrants are defined in section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988.

[11] See Matter of Mesa, 12 I. & N. Dec. (Dep. Assoc. Comm. 1967) (public charge exception under the CAA); NACARA, Pub. L. 105-100, **[section 202]**; HRIFA, Pub. L. 105-277, Division A, Title IX, **[section 902]**.

[12] Cuban/Haitian entrants are defined in section 501(c)(e) of the Refugee Education Assistance Act of 1980.

[13] Section 101(a)(13)(C) provides that an LPR seeking admission to the U.S. is not an applicant for admission unless the alien: (i) has abandoned or relinquished that status; (ii) has been absent for more than 180 days; (iii) has engaged in illegal activity after leaving the U.S.; (iv) left the U.S. while in removal proceedings; (v) has committed certain offenses in the U.S.; or (vi) is attempting to enter other than at a port of entry or has not been admitted to the U.S. after inspection and authorization.

benefits is not an adverse factor in meeting the "good moral character" requirement for registry, absent evidence that an applicant procured or attempted to procure such benefits through fraud or misrepresentation.

5. Receipt of benefits by children and other family members

The Service has addressed the issue of receipt of benefits by children and other family members in a number of memoranda on the issue of public charge for aliens applying for legalization under section 245A of the INA. The Service's approach to the receipt of benefits by family members in the legalization context has been upheld in federal court and should govern the question for general public charge determinations as well.[14] The rule is well summarized in an April 21, 1988, memorandum from the Associate Commissioner for Examinations to the Regional Commissioners:

> As a general rule, the receipt of . . . benefits by a member of the . . . applicant's family is not attributed to the applicant for purposes of determining the likelihood that the applicant will become a public charge. . . . If, however, the family is reliant on the . . . benefits as its sole means of support, the . . . applicant may be considered to have received public cash assistance. This determination is to be made on a case-by-case basis and upon consideration of the totality of the applicant's circumstances.

Although this memorandum specifically addressed the receipt of cash assistance under the former Aid to Families with Dependent Children (AFDC) program, the rule is applicable generally to benefit programs that may give rise to public charge determinations. **Accordingly, Service officers should not attribute benefits received by U.S. citizen or alien children or other family members to alien applicants for purposes of determining whether the applicant is likely to become a public charge, absent evidence that the family is reliant on the benefits as its sole means of support.**

6. Benefits that may and may not be considered for public charge purposes

The term "public charge" is not defined in law or regulation and, in the past, the Service has not provided comprehensive guidance on the kinds of benefits that could cause an alien to be considered a public charge. In light of the new laws and the complexity of the federal, state, and local public benefits system, this issue now requires that the Service adopt uniform standards. Accordingly, the Service is publishing a proposed rule for notice and comment, as noted above. The proposed standards take into account the law and public policy decisions concerning alien eligibility for public benefits and public health considerations, as well as past practice by the Service and the Department of State.

It has never been Service policy that any receipt of services or benefits paid for in whole or in part from public funds renders an alien a public charge, or indicates that the alien is likely to become a public charge. The nature of the public program must be considered. For instance, attending public schools, taking advantage of school lunch or other supplemental nutrition programs, receiving emergency medical care, or collecting earned social security payments would not make an alien inadmissible as a public charge, despite the use of public funds. While the Service has not previously issued guidance on a program-by-program basis, the Department of State did codify its policy in the Foreign Affairs Manual (FAM), excluding Food Stamps from consideration for public charge purposes because of its

[14] See Perales v. Reno, 48 F.3d 1305 (2d Cir. 1995).

"supplemental" nature.[15] The Service is now taking a similar approach by adopting a definition of public charge that focuses on whether the alien is or is likely to become **primarily dependent on the government for subsistence**. After extensive consultation with benefit-granting agencies, the Service has determined that **the best evidence of whether an alien is primarily dependent on the government for subsistence is either (i) the receipt of public cash assistance for income maintenance, or (ii) institutionalization for long-term care at government expense.**

The Service is proposing this definition by regulation and adopting it on an interim basis for several reasons. First, confusion about the relationship between the receipt of public benefits and the concept of "public charge" has deterred eligible aliens and their families, including U.S. citizen children, from seeking important health and nutrition benefits that they are legally entitled to receive. This reluctance to access benefits has an adverse impact not just on the potential recipients, but on public health and the general welfare. Second, non-cash benefits (other than institutionalization for long-term care) are by their nature supplemental and do not, alone or in combination, provide sufficient resources to support an individual or family. In addition to receiving non-cash benefits, an alien would have to have either additional income – such as wages, savings, or earned retirement benefits – or public cash assistance. Thus, by focusing on cash assistance for income maintenance, the Service can identify those who are primarily dependent on the government for subsistence without inhibiting access to non-cash benefits that serve important public interests. Finally, certain federal, state, and local benefits are increasingly being made available to families with incomes far above the poverty level, reflecting broad public policy decisions about improving general public health and nutrition, promoting education, and assisting working-poor families in the process of becoming self-sufficient. Thus, participation in such programs is not evidence of poverty or dependence.

In adopting this new definition, the Service does not expect to substantially change the number of aliens who will be found deportable or inadmissible as public charges. First, under the stricter eligibility rules of the welfare reform laws, many legal aliens are no longer eligible to receive certain types of public benefits, so they run no risk of becoming public charges by virtue of such benefits. Many of those who remain eligible for federal, state, and local public benefits are LPRs, refugees, and asylees, who are unlikely to face public charge screening in any case in light of the section 101(a)(13)(C) and the statutory exemptions.[16] Further, in light of the Matter of B test, deportations on public charge grounds have been rare and are expected to remain so. With respect to admissibility, the new AOS has already raised the threshold for many families to demonstrate that a sponsored alien is not likely to become a public charge. In addition, the statutory factors under section 212(a)(4)(B) continue to apply. **Thus, while the Service will not take an alien's past or current receipt of non-cash benefits such as medical assistance into account for public charge purposes, the alien's age, health, and resources must be considered (along with the other statutory factors) in determining whether he or she is likely to become primarily dependent on the government for subsistence in the future.**

The rules governing alien eligibility for federal, state, and local public benefits are complex and subject to change, including significant state-by-state variations. INS officers are not expected to know the substantive eligibility rules for different public benefit programs. Rather, in the face of complexity and variation in the availability of public benefits, this guidance and the proposed rule are intended to make

[15] 9 FAM § 40.41, n.9.1.

[16] See Section 4. above, for a discussion of public charge exemptions.

public charge determinations simpler and more uniform, while simultaneously providing greater predictability to the public.

A. Benefits that may be considered for public charge purposes

Cash benefits for income maintenance and institutionalization for long-term care at government expense may be considered for public charge purposes. The most common examples of such benefits are:

1. Supplemental Security Income (SSI) under Title XVI of Social Security Act;
2. Temporary Assistance for Needy Families (TANF) cash assistance (part A of Title IV of the Social Security Act) (successor to the AFDC program);[17]
3. State and local cash assistance programs (often called "General Assistance" programs); and
4. Programs (including Medicaid) supporting aliens who reside in an institution for long-term care (i.e., a nursing home or mental health institution).

Past or current receipt of such cash benefits does not lead to a per se determination that an alien is either inadmissible or deportable as a public charge. Rather, such benefits should be taken into account under the totality of the circumstances test for purposes of admission/adjustment and should be considered for deportation purposes under the standards of section 237(a)(5) and Matter of B.

Note that not all cash assistance is provided for purposes of income maintenance, and thus not all cash assistance is relevant for public charge purposes. For example, some energy assistance programs provide supplemental benefits through cash payments, in addition to vouchers or in-kind benefits, depending on the locality and the type of fuel needed. Such supplemental, special purpose cash benefits should not be considered in public charge determinations because they are not evidence of primary dependence on the government for subsistence.

B. Benefits that may not be considered for public charge purposes

Non-cash benefits (other than institutionalization for long-term care) should not be taken into account in making public charge determinations, nor should special-purpose cash assistance that is not intended for income maintenance. Therefore, past, current, or future receipt of these benefits should not be considered in determining whether an alien is or is likely to become a public charge. Further, an alien need not repay benefits already received or withdraw from a benefit program in order to be eligible for admission or adjustment of status.

It is not possible to list all the supplemental, non-cash benefits an alien may receive that should not be considered for public charge purposes, but common examples include:

1. Medicaid and other health insurance and medical services (including public assistance for immunizations and for testing and treatment of symptoms of communicable diseases; use of health

[17] States have flexibility in administering theTANF program and may choose to provide non-cash assistance such as subsidized child care or transportation vouchers in addition to cash assistance. Such non-cash benefits should not be considered for public charge purposes.

clinics, etc.) other than support for institutionalization for long-term care[18]
2. Children's Health Insurance Program (CHIP)
3. Nutritional programs, including Food Stamps, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and benefits under the National School Lunch Act
4. Housing assistance
5. Child care services
6. Energy assistance, such as the Low Income Home Energy Assistance Program (LIHEAP)
7. Emergency disaster relief
8. Foster care and adoption assistance
9. Educational assistance, including benefits under the Head Start Act and aid for elementary, secondary, or higher education
10. Job training programs
11. In-kind, community-based programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter).

State and local programs that are similar to the federal programs listed above should also be excluded from consideration for public charge purposes. Note that states may adopt different names for the same or similar publicly funded programs. In California, for example, Medicaid is called "Medi-Cal" and CHIP is called "Healthy Families." It is the underlying nature of the program, not the name adopted in a particular state, that determines whether it should be considered under this exemption.

7. Affidavit of Support

The new AOS form, Form I-864, asks whether the sponsor or a member of the sponsor's household has received means-tested benefits within the past 3 years. The purpose of this question is not to determine whether the sponsor is or is likely to become a public charge, but to ensure that the adjudicating officer has access to all facts that may be relevant in determining whether the 125-percent annual income test is met. Any cash benefits received by the sponsor cannot be counted toward meeting the 125-percent income threshold, but receipt of other means-tested benefits, such as Medicaid, is not disqualifying for sponsorship purposes. As noted above, public benefit programs are increasingly available to families with incomes above 125 percent of the poverty line.

The regulations implementing the new AOS requirement are found at 8 CFR part 213a. Separate guidance has been issued on adjudicating applications including an AOS.

Continued Use of Form I-134

The use of the new AOS is mandatory for those categories of immigrants listed in section 212(a)(4)(C) and (D), and a Service officer may not accept a Form I-134 in place of the new AOS for these immigrants if the application was filed on or after December 19, 1997. In those cases not governed by sections 212(a)(4)(C) and (D) and 213A (e.g., parolees or nonimmigrants) in which the Service has traditionally accepted Form I-134, Service officers may continue to do so on a discretionary basis. Use of Form I-361 will continue in cases involving Amerasians under Public Law

[18] The Service's decision not to consider Medicaid, CHIP, and Food Stamps for public charge purposes does not affect the authority of benefit granting agencies to seek repayment for benefits received by an alien from the alien's sponsor under the new AOS.

97-361.

8. Naturalization

In the overwhelming majority of cases, public charge is not a factor at the time of naturalization. The Service has no authority to make the repayment of public assistance a condition for granting naturalization, and officers should not request proof of repayment from applicants in connection with a naturalization adjudication.

There are two narrow circumstances under which the public charge issue can arise in a naturalization case. First, the alien's admission for permanent residence may not have been "lawful" pursuant to section 318 because, *at the time of entry or adjustment*, the alien was subject to exclusion as an alien likely to become a public charge. This would generally occur only if the alien withheld or misrepresented material facts relating to the public charge issue at the time of entry or adjustment. Secondly, the alien's initial admission may have been lawful, but later the alien may have become deportable as a public charge. As a practical matter, neither of these situations is likely to occur.

9. Public Charge Bonds

Section 213 of the INA, Admission of Certain Aliens on Giving Bond, was amended by IIRIRA only by including a parenthetical reference to the new AOS prescribed in section 213A. Where appropriate, officers may use the public charge bond option pursuant to section 213 as has been done in the past.

If there are any additional questions, contact _____, Headquarters Office of_____, at (202) xxx-xxxx.

National Association of Community Health Centers, Inc.
1330 New Hampshire Avenue, NW - Suite 122
Washington, DC 20036

Phone: 202/659-8008 Fax: 202/659-8519

To: CHRIS JENNINGS

Fax Number: 202 456 5557

From: FREDA MITCHEM

Date: OCTOBER 29, 1998

Number of pages including this cover sheet: 3

Message:
THANK YOU.

National Association of
Community Health Centers, Inc.®

October 30, 1998

The President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20510

Dear President Clinton:

This summer, HHS Secretary Shalala challenged community, migrant, and homeless health centers (also known as Federally Qualified Health Centers) to do our part in helping enroll eligible children into Medicaid and the Child Health Insurance Program. This appeal was made because 800 health centers serve both urban and rural medically under-served communities with many potentially eligible needy children.

As the national health center network has accelerated its efforts to assist in enrolling eligible children into these two important public health programs, we have become convinced that (1) a lack of policy clarity as well as (2) discretion and variations in policy implementation of the immigration "public charge" laws together serve as major barriers to implementation of Medicaid and CHIP for legally eligible children who are part of immigrant communities throughout the country.

During a recent trip to California, for example, I heard from numerous health centers that many immigrant parents who are lawfully present in this country refuse to enroll children who are legally eligible for the Healthy Families Program (California CHIP) because the parents fear negative immigration consequences. These children are legally eligible for the Medicaid and CHIP programs. Many of them are U.S. citizens. These children need access to ongoing health care. Their hard-working parents often work for low wages in jobs without benefits and cannot afford to purchase their own health insurance. Despite the health needs of their children, the parents are chilled by the notion that obtaining legally available health benefits for their children may, at some point in the future, be considered a negative factor when authorities weigh whether or not the parents, or other family members, should be considered at risk of becoming a "public charge" for immigration purposes.

Many of these children are currently being served by community health centers, public health clinics, and other community-based non-profit providers, albeit it on a less comprehensive basis than if the children were enrolled in Medicaid or CHIP. These public and non-profit providers are consequently denied access to the Medicaid and CHIP reimbursements which they legally should be receiving for eligible children because of parents' fears of enrolling their children. This hampers the ability of these safety net providers to stretch their limited health care dollars to meet the needs of the many uninsured and under-insured individuals and families which need their care.

In looking into this issue, we have found that parents' fears are not necessarily unfounded. It appears that the "public charge law" is in need of clarification, and that consistent policy guidance needs to be issued to immigration authorities throughout the U.S. . Even a few incidents in which families have been requested to repay Medicaid benefits legally received by their children in order to re-enter the

1330 New Hampshire Avenue, N.W. Washington, D.C. 20036 (202) 659-8008 FAX (202) 659-8519

country or in which a child's access to nutrition or health programs, is used against the parents when they attempt to change their immigration status or sponsor a family member, have a very long reach in immigrant communities.

We deeply appreciate the fact that your Administration has supported restoration of needed services to legal immigrants and has issued useful, practical policies which enable many community-based health care organizations to continue to serve their entire communities without restrictions due to immigration status.

We now appeal to your Administration to issue a policy clarification which states that enrollment in and receipt of critical non-cash assistance programs - especially public health and nutrition benefits such as Medicaid and CHIP - for which individuals are legally eligible, will not be considered in arriving at a determination as to "public charge" status of the eligible individuals, their parents or a family member. This policy clarification should be communicated aggressively to all immigration agents throughout the country. Additionally, it should be communicated to State Medicaid and State Health Agencies to incorporate into their public information regarding Medicaid and CHIP enrollment.

Without such a clarification, in too many communities the promise of improved health which the CHIP expansion held will not become a reality. Your leadership is desperately needed to ensure that children who are legally eligible for these important public health benefits which can aid them in establishing productive futures will no longer continue to be denied essential health services.

We thank you for your attention to this important issue.

Sincerely,

Tom Van Coverden

Tom Van Coverden
President and CEO

cc: The Honorable Donna Shalala, Secretary of Health and Human Services
Attorney General Janet Reno, Department of Justice
The Honorable Daniel R. Glickman, Secretary of Agriculture
Commissioner Doris Meissner, Immigration and Naturalization Service
The Honorable Madeleine K. Albright, Secretary of State
Chris Jennings, Deputy Assistant to the President for Health Policy Development

AAPCHO

Association of Asian Pacific Community Health Organizations
1440 Broadway, Suite 510, Oakland, CA 94612
(510) 272-9536/(510) 272-0817 fax

To: Chris Jennings, The White House

Fax: (202) 456-5557

From: Stephen P. Jiang

Date: Nov. 4, 1998

Number of pages sent (including cover sheet): 3 pages

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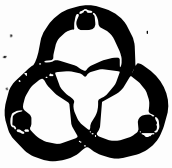

AAPCHO

Association of Asian Pacific Community Health Organizations

October 30, 1998

Ms. Doris Meissner, Commissioner
U.S. Department of Justice
Immigration and Naturalization Service
425 I Street, NW
Washington, DC 20536

Secretary Madeleine K. Albright
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

Dear Commissioner Meissner and Secretary Albright:

We are writing to urge the Immigration and Naturalization and Department of State to adopt policies which will limit the impact of receipt of various forms of government assistance on an individual's application for permanent residency and adjustment of status. The Association of Asian Pacific Community Health Organizations (AAPCHO) is a national network of community health centers whose primary service population are legal permanent residents from Asia or Pacific Islands. Your clarification on this matter will greatly assist our member organizations in continuing their efforts to ensure access to quality health care for their patients.

There is widespread confusion in immigrant communities across the nation which has led to immigrant families being reluctant to receive needed health and other social services which are vital as a safety net for their family. Unwillingness to seek health care services or to enroll in government-sponsored health care programs creates a public health danger. For example, community health centers across the country have reported increasing numbers of patients in late stages of their diseases, citing fear of using health center services as counting against them in their efforts to gain U.S. citizenship. There are numerous other examples of legal permanent residents not seeking proper medical care because of their fear of affecting their immigration status. A policy which includes the following three principles will greatly assure our communities about the safety of receiving critical health, nutrition and other public services when they are in need:

1. We urge you to adopt a policy which excludes non-cash assistance from consideration. This is consistent with the recent letters from Commissioner Meissner clarifying that receipt of public benefits by United States citizen children will not be counted against the parent applying for residency as long as it is not the sole means of

2. support for the family. Non-cash assistance such as health care and school lunch programs are never the sole means of support for a family. There is also precedence for a policy excluding non-cash assistance in making public charge determinations in the legalization program created by the Immigration Reform and Control Act of 1986 (IRCA). Immigrant families should not be afraid to seek emergency treatment or obtain health care for their children.

3. We would also urge you to exclude benefits received by family members other than the applicant. The test for public charge is whether the applicant is likely to become a public charge in the future, not whether his or her family members receive benefits they are legally entitled to receive.

4. Finally, past, temporary receipt of public benefits should not be considered a factor in determining whether someone is likely to become a public charge in the future. Immigrants use public benefits at the same rate as U.S. citizens, usually for temporary periods, in times of need, which all Americans may face, such as to flee an abusive situation with their children. They should not be penalized for this.

While we understand that public charge determinations are based on a variety of factors, we believe these principles must be incorporated into clear policies by the Immigration and Naturalization Service and the Department of State to avoid the confusion and possible endangerment of the lives and health of immigrants and the community.

Sincerely,

Stephen P. Jiang, ACSW
Executive Director

cc: Chris Jennings, The White House
Dennis Hayashi, Department of Health and Human Services
Bob Bach, Immigration and Naturalization Service
Mildred A. Patterson, Office of Visa Services, Department of State

public charge

SOUTHWEST COMMUNITY HEALTH CENTER

October 15, 1998

Commissioner Doris Meissner
U.S. Department of Justice
Immigration and Naturalization Service
425 I Street, NW
Washington, DC 20536

Dear Commissioner Meissner:

On behalf of the Board of Directors of the Southwest Community Health Center, I am writing to urge you to adopt policies that clarify the impact of receipt of government sponsored health care assistance on an individual's application for permanent residency and adjustment of status. The current confusion on which government assistance programs will or will not have immigration consequences has resulted in fear among eligible immigrants in accessing necessary health care services. Avoidance of the health care services by immigrants with communicable diseases creates a public health concern for all of our residents. California community health centers such as ours are experiencing a growth in uncompensated care that clearly appears to be linked to the fear of adverse "public Charge" determinations. Continued growth in uncompensated care threatens to destabilize the safety net providers in one of the states receiving the highest level of immigration.

Several letters from you have stated a policy regarding the use of Healthy Families (CHIP) benefits and any potential immigration consequences. The policy does not go far enough to remove the fear of receiving necessary health care. We urge you to issue a firm official policy regarding public charge determinations that will include:

Exclude non-cash health care assistance such as Medi-Cal (Medicaid) and Healthy Families (Children' Health Insurance Programs) from all public charge determinations.

Ensure that the INS policy makes clear that INS personnel will not question applicants about receipt of non-cash health care assistance.

Exclude benefits received by family members other than the applicant in a public charge determination. Seeking health care services for ones children should not be a decision that may impact the stability of an entire family.

Exclude past, temporary receipt of non-cash benefits from public charge determinations. The acceptance of emergency Medicaid services in a life-threatening situation in a prospective consideration is simply not justifiable.

751 Lombardi Court, Suite B • Santa Rosa • California 95407 tel: 707-547-2222 • fax: 707-547-2230

A firmly stated agreement between the Department of State and the Department of Justice (INS) on the policies that are to be followed by the INS at all levels. The casual jeopardizing of public health needs to be stopped wherever possible.

We urge you to adopt a policy that will bring an end to the hazardous health trends California is currently experiencing. This has to be a problem common to all of the Border States, and isn't just peculiar to California. The only answer to these problems is clear policies from your agency and the Department of State that are sensitive to the health concerns of both new immigrants and all present residents.

Sincerely,

William D. Hughes
Executive Director

cc: Chris Jennings, The White House
Dennis Hayashi, Department of Health and Human Service
Elia Gallardo, CPCA

CALIFORNIA IMMIGRANT WELFARE COLLABORATIVE

926 J Street, Suite 408, Sacramento, CA 95814 Tel ◆ 916.448.6762 Fax ◆ 916.448.6774

FAX COVER PAGE

DATE: _____ NO. OF PAGES (WITH COVER): _____

FROM: Angie Wei

TO: GIANNINA PEREZ
FAX 2 DAVIS

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Message:
SORRY FOR THE DELAY!

CALIFORNIA IMMIGRANT WELFARE COLLABORATIVE

926 J Street, Suite 408, Sacramento, CA 95814 Tel ◆ 916.448.6762 Fax ◆ 916.448.6774

Ms. Doris Meissner, Commissioner
U.S. Department of Justice
Immigration and Naturalization Service
425 I Street, NW
Washington D.C. 20536

October 26, 1998

Dear Commissioner Meissner:

The California Immigrant Welfare Collaborative is a partnership among four immigrant rights organizations: the Asian Pacific American Legal Center of Southern California (APALC), the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), the National Immigration Law Center (NILC), and the Northern California Coalition for Immigrant Rights (NCCIR).

On behalf of the agencies listed below, we write to urge the INS and Department of State to adopt a policy that would limit the consequences of receiving public assistance on an immigrant's application for permanent residency or adjustment of status. We know that immigrants and their families, based on their confusion over public charge policies, have been fearful to seek critical health and other social services, thereby threatening the health of all our communities.

A policy which incorporates the following three principles will help alleviate fear, confusion, and reluctance in immigrant communities to secure critical services.

- **PROGRAMS THAT DO NOT OFFER CASH ASSISTANCE (E.G. HEALTH CARE, SCHOOL LUNCHES) SHOULD BE EXCLUDED FROM PUBLIC CHARGE DETERMINATIONS.** These supplemental programs do not provide the sole means of support to immigrant families and are not good indicators of whether a person is likely to become dependent on public benefits.

- **ONLY THE INDIVIDUAL RECEIVING NON-CASH PUBLIC BENEFITS SHOULD BE SUBJECT TO THE PUBLIC CHARGE TEST.** Family members who do not receive public benefits should be excluded from the public charge test. For example, a citizen child's enrollment in Healthy Families or Medi-Cal should not affect her mother's attempts to adjust her immigration status.

- **TEMPORARY USE OF BENEFITS SHOULD NOT BE CONSIDERED IN PUBLIC CHARGE DETERMINATIONS.** Immigrants may use public benefits temporarily if they lose their job, need to flee an abusive relationship, or have lost their health care coverage. Using benefits for a short period of time does not demonstrate that the immigrant will become dependent on public benefits in the future.

CALIFORNIA IMMIGRANT WELFARE COLLABORATIVE

926 J Street, Suite 408, Sacramento, CA 95814 Tel ◆ 916.448.6762 Fax ◆ 916.448.6774

While we understand that public charge determinations are based on a variety of factors, we believe that these three principles must be incorporated into a clear policy. Thank you very much for your attention to this matter. If you have any questions, please feel free to contact me at 510/663.8282, extension 304.

Sincerely,

Angie Wei
Policy Analyst

cc: Chris Jennings, The White House
Dennis Hayashi, Department of Health and Human Services
Bob Bach, Immigration and Naturalization Service
Mildred A. Patterson, Office of Visa Services, Department of State

CALIFORNIA IMMIGRANT WELFARE COLLABORATIVE

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THE FOLLOWING ORGANIZATIONS ENDORSE THE ABOVE PRINCIPLES:

ORGANIZATION	CONTACT PERSON	LOCATION
AAPCHO	Jeff Caballero	Oakland
African Immigrant & Refugee Resource Center	Reverend Ashiyradam Rayikanti	San Francisco
Alameda Health Consortium	Christopher Martinez	Alameda
Asian Health Services	Sherry Hirota	Oakland
Asian Law Alliance	Richard Konda	San Jose
Asian Pacific American Labor Alliance, AFL-CIO (APALos Angeles)	Kathleen Yasuda	Los Angeles
Asian Pacific Community Counseling	Judy Fong Heary	Sacramento
Asian Pacific Older Adults Task Force	Andrea Spolidoro	Los Angeles
Asian Youth Center	Phina Li	Los Angeles
Bernal Heights Neighborhood Center	Meeta Ranijna	San Francisco
California Women's Law Center	Susan Berke Fogel	Los Angeles
Cambodian Association of America	Him S. Chhim	Los Angeles
Catholic Charities Immigrant and Refugee Program, Diocese of Stockton	Judy McDonnell Lyn Kirkconnell	Stockton
Catholic Charities of Los Angeles	Nam-Loc Nguyen	Los Angeles
Catholic Charities of San Jose	Maria Picetti	San Jose
Catholic Charities, Diocese of Fresno	Alice Rocha	Fresno
Central American Resource Center (CARECEN)	Raquel Fonte	Los Angeles
Central American Resource Center (CARECEN)	Teresa Rivas	Los Angeles
Centro Legal de La Raza	Victor Ochoa	Oakland
Children's Advocacy Institute/Center for Public Interest Law	Kathyrn Dresslar	Sacramento
Children's Clinic Serving Children and Families	Elisa Nicholas, M.D.	Los Angeles
Citizenship Expansion Task Force of Santa Cruz County	Christine Johnson-Lyons	Santa Cruz County
Clinica para Las Américas	Alice Heidy	Los Angeles
Community Health Conucils, Inc.	Lark Galloway-Gilliam	Los Angeles
Cristal Verde	Franci Collins	South Bay

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ORGANIZATION	CONTACT PERSON	LOCATION
East Bay Community Law Center	Edward Barnes	Los Angeles
Equal Rights Advocates	Deanna Zachary	San Francisco
Human Services Network of L.A.	Sam Mistrano	Los Angeles
IHSS Public Authority	Donna Calame	San Francisco
Interfaith Coalition for Immigrant Rights	Reverend Donald L. Smith	Los Angeles
International Institute	Steve Voss	Los Angeles
International Institute of the East Bay	Valerie A. O'Donnell	Oakland
Japanese American Services of the East Bay	Laura Takeuchi	Oakland
Jewish Family & Children's Services	Dr. Anita Friedman	San Francisco
Korean Resource Center	Dae Joong Yoon	Los Angeles
Koryo Health Foundation	Jayna Kim	Los Angeles
La Raza Centro Legal	Pedro Rios	San Francisco
Legal Aid Society of San Francisco/ Employment Law Center	Marielena Hincapié	San Francisco
Los Angeles Center for Law and Justice	Luis Antonio de la Rosa	Los Angeles
Maternal and Child Health Access	Lynn Kersey	Los Angeles
Na Loio – Immigrant Rights and Public Interest Legal Center	Patricia McManaman	Los Angeles
Napa County Council for Economic Opportunity	Ana M. Kowalkowska	Napa
National Center for Youth Law	Jeanne Finberg Martha Mathews	San Francisco
National Korean American Service & Education Consortium, Inc.	Eun Sook Lee	Los Angeles
National Lawyers Guild	Riva Enteen	San Francisco
North East Medical Services	Sophie Wong	San Francisco
Organization of Chinese Americans	Helen Y. H. Hui	San Francisco
Our Redeemer Lutheran Church/ Casa de la Dignidad	Reverend William H. Ruth	Fresno
Rural Health Advocacy Institute	Caleb Arias	Stockton
San Francisco Food Bank	Sean Brooks	San Francisco
SEIU Local 660	Tanya Marie Akel	Los Angeles
St. Anselm Cross-Cultural Community Center	Marianne Blank Cung Pham	Garden Grove
Western Center on Law and Poverty	Lucy Quincella	Sacramento

FAX TRANSMITTAL FORM

APIAHF

2 Market Street, 2nd Floor
n Francisco CA 94102
5-954-9988 (phone)
5-954-9999 (fax)

DATE: 10/22/98 PAGE 1 OF 5

TO: CHRIS JENNINGS FROM: DEEANA JANG

THE WHITE HOUSE

FAX #: (202) 456-5557 PHONE # (415) 954-9957

REMARKS: See attached.

PLEASE:
- ☐ URGENT!
- ☐ Note and return
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http://www.apiahf.org/apiahf

Asian & Pacific Islander American
Health Forum
National Advocates for Asian & Pacific Islander Health

October 22, 1998

Ms. Doris Meissner, Commissioner
U.S. Department of Justice
Immigration and Naturalization Service
425 I Street, NW
Washington, DC 20536

Dear Commissioner Meissner:

I am writing on behalf of the Asian and Pacific Islander American Health Forum (APIAHF) to urge the Immigration and Naturalization and Department of State to adopt policies which will limit the impact of receipt of various forms of government assistance on an individual's application for permanent residency and adjustment of status. APIAHF is a national advocacy organization promoting the improvement of health status of Asian American and Pacific Islander communities. There is widespread confusion in immigrant communities across the nation which has led to immigrant families being reluctant to receive needed health and other social services which are not only vital as a safety net for their family. We have already documented a disproportionate drop in Medicaid enrollment among Asian American and Pacific Islander noncitizens since the passage of welfare and immigration reforms. Unwillingness to seek health care services or to enroll in government-sponsored health care programs can potentially jeopardize public health. A policy which includes the following three principles will greatly assure our communities about the safety of receiving critical health, nutrition and other public services when they are in need:

1) **We urge you to adopt a policy which excludes non-cash assistance from consideration.** This is consistent with the recent letters from Commissioner Meissner clarifying that receipt of public benefits by United States citizen children will not be counted against the parent applying for residency as long as it is not the sole means of support for the family. Non-cash assistance such as health care and school lunch programs could never serve as the sole means of support for a family. There is also precedence for a policy excluding non-cash assistance in making public charge determinations in the legalization program created by the Immigration Reform and Control Act of 1986 (IRCA).

Applicants for legalization were subject to a special "public charge" rule which required that applicants demonstrate the ability to support themselves on their income without relying on "public cash assistance". 8 CFR § 245a.2(4) (1-1-92 Edition). "Public cash assistance" was defined in the regulations to specifically exclude in-kind assistance "such as food stamps, public housing, or other non-cash benefits, nor does it include work-related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years

of age, or treatment in the interest of public health)." 8 CFR § 245a.1(i) (1-1-92 Edition). Immigrant families should not be afraid to seek emergency treatment or obtain health care for their children.

2) **We would also urge you to exclude benefits received by family members other than the applicant.** The test for public charge is whether the applicant is likely to become a public charge in the future, not whether his or her family members receive benefits they are legally entitled to receive.

3) **Finally, past, temporary receipt of public benefits should not be considered a factor in determining whether someone is likely to become a public charge in the future.** Immigrants use public benefits at the same rate as U.S. citizens, usually for temporary periods, in times of need, which all Americans may face, such as to flee an abusive situation with their children. They should not be penalized for this.

While we understand that public charge determinations are based on a variety of factors, we believe these principles must be incorporated into clear policies by the Immigration and Naturalization Service and the Department of State to avoid the confusion and possible endangerment of the lives and health of immigrants and the community.

Sincerely,

Deeana Jang

Deeana Jang
Program Coordinator, Health Policy Division

cc: Chris Jennings, The White House
Dennis Hayashi, Department of Health and Human Services
Bob Bach, Immigration and Naturalization Service

APIAHF

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Asian & Pacific
Islander American
Health Forum
National Advocates for Asian & Pacific Islander Health

October 22, 1998

Secretary Madeleine K. Albright
Department of State
2201 C Street, NW
Washington, DC 20520

Dear Secretary Albright:

I am writing on behalf of the Asian and Pacific Islander American Health Forum (APIAHF) to urge the Immigration and Naturalization and Department of State to adopt policies which will limit the impact of receipt of various forms of government assistance on an individual's application for permanent residency and adjustment of status. APIAHF is a national advocacy organization promoting the improvement of health status of Asian American and Pacific Islander communities. There is widespread confusion in immigrant communities across the nation which has led to immigrant families being reluctant to receive needed health and other social services which are not only vital as a safety net for their family. We have already documented a disproportionate drop in Medicaid enrollment among Asian American and Pacific Islander noncitizens since the passage of welfare and immigration reforms. Unwillingness to seek health care services or to enroll in government-sponsored health care programs can potentially jeopardize public health. A policy which includes the following three principles will greatly assure our communities about the safety of receiving critical health, nutrition and other public services when they are in need:

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While we understand that public charge determinations are based on a variety of factors, we believe these principles must be incorporated into clear policies by the Immigration and Naturalization Service and the Department of State to avoid the confusion and possible endangerment of the lives and health of immigrants and the community.

Sincerely,

Deeana Jang

Deeana Jang
Program Coordinator, Health Policy Division

cc: Chris Jennings, The White House
Dennis Hayashi, Department of Health and Human Services
Bob Bach, Immigration and Naturalization Service

NHeLP National Health Law Program, Inc.

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chris — where are we on public charge

August 7, 1998

Doris Meissner
Commissioner
Immigration and Naturalization Service
U.S. Department of Justice
Washington, D.C. 20536

Re: The Impact of INS Public Charge Policy on U.S. Citizen Children's Health Access

Dear Ms. Meissner:

The National Health Law Program has been working with other health and immigrants rights groups across the country to monitor the impact of INS public charge determinations on immigrants access to health care. We were therefore very pleased to receive a copy of your July 22, 1998 letter to Gloria Molina, First District Supervisor for the L.A. County Board of Supervisors regarding INS' public charge policy and the receipt of medical assistance by U.S. citizen children. Your letter states that, "it has been INS policy for many years that the receipt of benefits by an alien's U.S. citizen child is not attributed to the alien parent or other family members for public charge purposes. *The only time this general rule would not apply would be if the family were reliant on the child's benefits as its sole means of support.*" (Emphasis supplied). We read this to mean that a family members's receipt of non-cash, health care benefits such as Medicaid should never form the basis of a denial under public charge grounds.

We welcome this unambiguous statement of policy from your office. Unfortunately, there is little evidence that this policy is being properly applied by INS field officers. Immigrant assistance organizations throughout the country report numerous cases in which receipt of Medicaid by a U.S. citizen child has been the sole basis for an adverse finding by the INS. In many cases, the applicant has been employed or has had an employed spouse.

INS consideration of non-cash, supplemental benefits such as Medicaid is not limited to public charge determinations. The proposed application form for NACARA asks for detailed information about the past receipt of public benefits including Medicaid. Applicants for citizenship have also been queried inappropriately about their past receipt of benefits, including Medicaid. Although the Public Charge Look Out System has been dismantled, in California, the INS is collaborating with armed California Department of Health Services employees who are stationed at ports of entry to interrogate families about their use of health care benefits.

As you are well aware, these practices are having a devastating impact on immigrants' access to health care. In a previous memorandum, we documented reports establishing that immigrants, young and old, are avoiding health care and not utilizing medical assistance, even when they are legally entitled to receive it.[1] Immigrant avoidance of health care because of INS enforcement policy and practice has alarmed public health officials. Bruce Bullen, the Medicaid Commissioner for the Commonwealth of Massachusetts, for example, has called the inclusion of Medicaid in the public charge determination "a direct threat to the public health of the larger community."[2]

Immigrant avoidance of health care is also undermining federal and state initiatives to enroll uninsured children in Medicaid and Title XXI programs. In California alone, where 73% of uninsured Medicaid eligible children were either foreign-born or had a foreign-born-parent, the number of U.S. born children of foreign born parents receiving Medicaid has dropped by 48% in two years. Angie Medina, Director of the Los Angeles County Children's Health Outreach Initiative states, "Unfortunately, we can't tell parents that signing up their children, who were born here and are eligible will not jeopardize their rights to gain citizenship or legal residency." She called the issue "significant, the biggest problem we have."

We are aware that interagency discussions are taking place and have hope that these will resolve the major policy conflicts that have led to the current crisis. The health care community overwhelmingly supports taking Medicaid and all other health care and related services out of the public charge equation. In the mean time, it is imperative that INS monitor more closely its field operations to address noncompliance with existing law, policies and procedures.

Sincerely,

Claudia Schlosberg
National Health Law Program
Washington, D.C.

Pat Baker
Massachusetts Law Reform Institute

---

[1]Schlosberg and Wiley, *The Impact of Public Charge Determinations on Immigrant Access to Health Care,* May 22, 1998, posted at www. healthlaw.org.

[2]Letter from Bruce Bullen to Chris Jennings, April 23, 1998.

cc: Donna Shalala, DHHS
Nancy Ann Min Deparle, HCFA
Chris Jennings, DPC
Dennis Hayashi, DHHS
Pat Waldren, ASPE
Sally Richardson, HCFA
Dan Mendelson, OMB
Jeff Farkas, OMB
Diana Fortuna, DPC

150 Valpreda Road - San Marcos CA 92069

North County Health Services

Fax

To:	Commissioner Doris Meissner Secretary Madeleine K. Albright	**From:**	Irma Cota, Executive Director
Fax:		**Pages:**	3
Phone:		**Date:**	10/27/98
Re:	Public Charge	**CC:**	Chris Jennings Dennis Hayashi

☑ **Urgent** ☑ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

- **Comments:** Public Charge and / or Public Health ?

Please distribute the attached correspondence to the persons whose names are listed. Thank You.

NORTH COUNTY HEALTH SERVICES

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HEALTH CENTERS

ENCINITAS
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Fax (760) 753-7259

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HEALTH PROMOTION & OUTREACH SERVICES
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HIV/AIDS CASE MANAGEMENT
(760) 736-6700

WIC
(760) 752-4324

IRMA COTA, M.P.H.
Executive Director

October 26, 1998

Ms. Doris Meissner, Commissioner
US Department of Justice
Immigration and Naturalization
425 I Street, NW
Washington, DC 20536

And

Secretary Madeline K. Albright
Department of State
2201 C. Street
Washington, DC 20520

Subject: "Public Charge" Determinations

Dear Commissioner Meissner or Dear secretary Albright:

As a representative of North County Health Services, I am writing to urge your office to adopt policies that clarify the impact of the receipt of government-sponsored, health care assistance on a n individual's application for permanent residency and adjustment of status. The current confusion on which government assistance programs will or will not have immigration consequences has resulted in fear among eligible immigrants in accessing necessary services including health care services. Unwillingness to seek health care services or to enroll in government-sponsored health care programs creates a public health danger. In addition, California community health centers are also experiencing a growth in uncompensated care that we believe is tied to this fear and that threatens to destabilize California's safety net providers.

To illustrate the concern expressed above, North County Health Services located in North San Diego County has been affected as other Community clinics in our area, with very low enrollment into the new children's insurance program, Healthy Families. The low enrollment is due to misleading advertisement, which ties this new program to Medi-Cal whose database can be access by the authorities to verify residency status. North County Health Services has also be affected by the issue of public charge in the areas of health care, with a diminished patient load, and a decrease in W(omen) I(nfant) and C(hildren) participants since the issue of "public charge" became an national and state agenda item.

I am aware of several letters from Doris Meissner, that state a general policy regarding the use of Healthy Families benefits and any potential immigration consequences. Unfortunately, it is difficult for us to alleviate the extreme fear that currently exists without being able to provide a clear and official policy statement from INS. We urge you to issue an official policy regarding public charge determinations and further urge that the policy include the following recommendations:

- "Public Charge" determinations must exclude non-cash assistance, such as Medicaid and State Children's Health Insurance Programs. This is consistent with the recent letters from Commissioner Meissner clarifying that receipt of public benefits by United states Citizen children will not be counted against the parent applying for residency as

NORTH COUNTY HEALTH SERVICES

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IRMA COTA, M.P.H.
Executive Director

long as the assistance is not the sole means of support for the family. In addition, this policy will ensure that eligible families do not fear using necessary health care benefits.

- Exclude past, temporary receipt of benefits from a "public charge" determination. To penalize an individual from receiving emergency Medi-Cal from a non-chronic condition in a prospective consideration of who is likely to become a "public charge" is simply unjustifiable especially if one considers the adverse public health consequences that the lack of clarity on this issue has already caused.

We urge your agency to adopt a policy that will bring an end to the hazardous health trends California is currently experiencing. Clear policies from INS and the Department of State that are sensitive to these health concerns is the only answer.

Sincerely,

Irma Cota, M.P.H.
Executive Director

Cc: Chris Jenning, The White House
Dennis Hayashi, Department of Health and Human Services