The Welfare State Strikes Back

by Don Barnett

Concerned that not enough people are using Medicaid and longing for the days, just 5 years ago, when almost 1 out of 9 Americans used food stamps the Clinton administration has launched an outreach campaign to re-build the rolls of the federal programs.

One of the facts to be advertised is that use of food stamps and Medicaid by immigrants will not trigger a "public charge finding." "Public charge," a term used in immigration law, refers to persons who may be inadmissible to the U.S. because the INS or a State Department consular officer abroad believes the individual will likely be unable to support himself or herself — or, will likely become a "public charge."

The public charge provision of immigration law can play a role at two junctures in the immigration process: 1) in deciding whether or not to admit or re-admit an individual from another country, and 2) during application for legal permanent resident ("green card" holder) status. Public charge considerations cannot be brought to bear during application for citizenship. Legally, an immigrant who becomes a public charge within 5 years of arrival can be deported.

The threat of a public charge finding has been somewhat of a deterrent to public benefits usage for individuals seeking legal permanent residency in the U.S.. But that is largely because of public confusion about the law. The law will be much less of a deterrent as of proposed rules from the administration clarifying and amending the public charge clause (Federal Register May 99).

For starters, the law totally exempts entire groups of immigrants from public charge consideration. Over the past two decades approximately 5 million legal new arrivals have been spared review under the law because they arrived as refugees, were granted asylum, or were in some other group granted extraordinary immigration privileges. This includes almost all Cubans and those seeking legal permanent residency under the Nicaraguan Adjustment and Central American Relief Act of 1997, an amnesty for undocumented immigrants known as NACCAR. It also covers Haitians seeking residency under the Haitian Refugee and Immigration Fairness (a direct spin-off of NACCAR) and Amerasians and "Lautenberg" parolees (certain Southeast Asians and former Soviets). By definition the 300,000 or so illegals who arrive here to stay each year also avoid the law.

In spite of this, the majority of those seeking to immigrate to the U.S. must pass the public charge test. But the only benefit programs that can cause a public charge problem are cash programs like TANF, SSI, local GA or Medicaid if it is used for long-term institutional care. Even usage of cash assistance hardly guarantees a public charge finding unless it is part of a long-term pattern. Furthermore, use of cash assistance by, say, citizen children who are receiving TANF payments is not a public charge issue for the parents unless the parents are using the assistance as their sole means of support.

A non-citizen family seeking legal permanent residency (a "green card") can freely use all of the following programs at the same time without being considered a public charge: food stamps, public housing, Medicaid, WIC, the Earned Income Tax Credit on wages earned, TANF and disability SSI for children and a host of smaller non-cash programs such as school lunches, transportation vouchers, energy assistance, job training, etc. Further, once this hypothetical family obtains legal permanent residency they can leave the country for up to half a year every year without any interruption in benefits or affect on their right to citizenship.

A recent GAO report found citizens naturalizing in 1996 and 1997 were three and a half times more likely to be using SSI than native born. It also found usage of TANF among the new citizens to be running at least two

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times the rate found among native-born. (In California 23.7 percent of the new citizens received Medicaid in 1997!) This would indicate the possibility of conditions that could trigger the ultimate sanction of public charge law — deportation of an individual who becomes a public charge within five years of arrival. But, according to the INS no one in recent memory has ever been deported under this provision of the law. In fact, since 1972, fewer than 10 individuals have been deported for this reason. With a media fixated on stories about mistreatment of individuals at the hands of the INS perhaps deportation of welfare-dependent newcomers is not a good idea. Such enforcement of the law would ignite a media firestorm. But would merely denying a Green Card to welfare-dependent individuals be so unthinkable? Apparently so as this, too, has not happened in recent memory.

"Public charge" law, at least as it affects those who manage to set foot on American soil, is null and void. Like medical screening, and the citizenship test it is a quaint relic of a bygone era and that's good news for the welfare state. TSC