

November 26, 2018

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U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
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Re: DHS Docket No. USCIS-2010-0012, RIN 1615-AA22, Comments in Response to Proposed Rulemaking:
Inadmissibility on Public Charge Grounds

The National Human Services Assembly (National Assembly) is a Washington, D.C.-based association comprised of some of the largest national nonprofit human service organizations. In aggregate, members and their affiliates collectively touch, or are touched by, nearly every household in America—as consumers, donors, or volunteers. The National Assembly's mission is to strengthen human services in the United States through the active involvement and leadership of its members, envisioning a nation that seriously and effectively addresses the human service needs of its citizens.

The National Assembly is writing to voice our strong opposition to the proposed changes regarding how the Department of Homeland Security (DHS) determine when an immigrant is likely to become a "public charge," which was published in the Federal Register on October 10, 2018. The proposed rule would threaten the well-being of our communities and the immigrants who live within them.

The rule would expand the list of benefits included in a public charge determination to include non-emergency Medicaid, the Supplemental Nutrition Assistance Program (SNAP), Medicare Part D Low Income Subsidy, Housing assistance, such as public housing or Section 8 housing vouchers and rental assistance, and the Low-Income Home Energy Assistance Program (LIHEAP). The rule would harm immigrants by ensuring more people are inadmissible or deportable¹ on public charge grounds. This would likely lead to a reduction in enrollment in these benefits, due to fear of becoming a public charge.

We urge DHS to withdraw the rule in its entirety, and retain the long-standing principles clarified in the 1999 field guidance, which remain in effect. Additionally, we oppose the addition of the Children's Health Insurance Program (CHIP) to the list of included benefits.

(A) The Rule Would Negatively Impact Children and Families

i. Noncitizen parents are disincentivized from using benefits that help their children thrive.

The proposed rule would negatively affect children in a multitude of ways. Parents' well-being is an important determinant of children's health and development, and children do best when their parents are healthy, their family has enough to eat, and they are economically stable.² Programs like Medicaid, SNAP, and housing assistance help families meet these basic needs. Currently, one in every four children has at least one parent who was born outside the U.S.³ If the rule were implemented as is, the use of

public benefits by these parents would count against them in their public charge determination, disincentivizing noncitizen parents from utilizing the public benefits that ensure their whole family can thrive.

Further, a noncitizen child's use of these public benefits is counted in that child's public charge determination. This creates a chilling effect among parents who do not want to compromise their child's prospects of becoming a U.S. Citizen in the future, potentially creating food insecurity for their children, leaving them uninsured, and perpetuating unstable housing situations. This chilling effect extends to immigrants who have legal permanent resident status because they may fear they will lose their status or the opportunity to apply for citizenship down the line. Overall, the proposed rule would threaten the health and well-being of roughly 9.2 million children in all, including immigrant children and citizen children with immigrant parents.⁴

All children, regardless of where they or their parents were born, deserve equal access to public benefits that help them to reach their full potential. Decreased access to health, nutrition, and housing programs that enhance well-being is harmful to a child's development and has negative implications into adulthood. Experiencing the stress and instability that comes with lack of housing, healthcare, and food security, often called toxic-stress, is proven to cause mental health issues, inhibited brain development, and other long-term social and emotional challenges.⁵

Additionally, the proposed rule would create barriers to accessing health care and nutrition assistance for pregnant women. Between 2008 and 2010, Medicaid covered almost half of all births in the United States.⁶ Medicaid coverage improves access to care and overall health, as well as reduces mortality rates.⁷ If pregnant women decline to enroll in Medicaid due to fears of becoming a public charge, they may lose access to pregnancy-related health services. Undoubtedly, the proposed inclusion of Medicaid on the list of public benefits considered in the public charge determination would have serious health implications for mothers and negative effects on their children's birth and early health outcomes.

ii. A decrease in use of public benefits harms communities as a whole.

Reduced participation in programs like SNAP resulting from the proposed rule would negatively impact communities as a whole. In 2017, hunger advocates around the country saw a decline in the number of eligible legal immigrants applying to SNAP, as well as an increase in the number of immigrants looking to withdraw from the program. These advocates credit this decline to widespread fear of using public benefits stemming from anti-immigrant rhetoric across the country.⁸ The Community Eligibility Provision (CEP), a meal service option that "allows the nation's highest poverty schools and districts to serve breakfast and lunch at no cost to all enrolled students without collecting household applications," chooses eligible districts based on number of enrollments in SNAP and other programs, such as Temporary Assistance for Needy Families (TANF).⁹ A decline in SNAP and TANF enrollments due to public charge determination could lead to entire school districts losing eligibility for CEP.¹⁰ Food insecurity among children has been shown to affect academic performance, social skills, and physical health.¹¹

iii. High-income families are unfairly favored

The proposed change to the totality of circumstances test that would now consider the income of the immigrant household in addition to the income of the financial sponsor makes the public charge

determination more difficult for low- and moderate- income families to pass. A family income of below 125 percent of the Federal Poverty Level (FPL) would be weighted as a negative in a public charge determination, while an income of 250 percent of the FPL or higher would be considered heavily positive. This negatively impacts applicants who do not yet have work authorization in the U.S. Further, the inclusion of dependents in the calculation of household size and may make it harder for larger immigrant families to surpass the FPL threshold.

Overall, ensuring that eligible families can use services that meet their nutrition, health care, and other essential needs keeps children learning, parents working, families strong, and allows all of us to contribute fully to our communities.

(B) The Rule Discriminates Against Persons with Disabilities

The proposed regulation would negatively impact immigrants with disabilities and their families. The rule specifically states that “any medical condition” of an applicant needing subsidized health insurance would count as a negative in their public charge determination. This includes both physical and mental health conditions that might limit a person’s ability to work, attend school, or care for themselves. This change would force those with disabilities to either risk failing their public charge test, or to refrain from reporting their condition and forgo health insurance or medical care.¹² The rule would, therefore, plainly discriminate against immigrants with disabilities for circumstances outside of their control. All immigrants, regardless of disability, deserve access to programs that support their health and well-being.

(C) Immigration Helps Our Economy Grow with Shared Prosperity

Current census data shows that almost 91 percent of all adults active in the labor force who would be affected by the proposed public charge rule are employed.¹³ If the rule were to cause a 15 to 35 percent disenrollment from SNAP and Medicaid alone, the economic cost to the U.S. could reach between \$14.5 to \$33.8 billion.¹⁴ Additionally, the number of potential jobs lost would range from 99,000 to 230,000.¹⁵

(D) Response to Administration’s Request for Comments Regarding the Addition of CHIP

The National Assembly opposes the proposed rule and requests that it be withdrawn in its entirety. In response to the specific question posed to the public, no additional programs should be considered in the public charge determination. The addition of CHIP, in particular, would exacerbate the negative outcomes outlined in these comments, and would inevitably lead to otherwise eligible children foregoing health care to avoid a public charge determination. Thank you for your consideration of these comments.

Sincerely,



Lee Sherman
President & CEO
National Human Services Assembly

¹ 8 U.S.C. § 1227(a)(5) (2017).

² *Effects of Poverty, Hunger and Homelessness on Children and Youth*, American Psychological Association, <https://www.apa.org/pi/families/poverty.aspx> (last visited Nov. 4, 2018).

³ Press Release, American Academy of Pediatrics, AAP Opposes Dangerous Public Charge Proposal (September 23, 2018), available at <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/AAP-Opposes-Dangerous-Public-Charge-Proposal.aspx>.

⁴ *The Proposed Public Charge Rule & Young Children*, Center for Law and Social Policy, <https://www.clasp.org/sites/default/files/publications/2018/10/The%20Proposed%20Public%20Charge%20Rule%20and%20Young%20Children%20Q%26A.pdf> (last visited Nov. 7, 2018).

⁵ *Persistent Fear and Anxiety Can Affect Young Children's Learning and Development*, Center on the Developing Child, Harvard University, <https://developingchild.harvard.edu/resources/persistent-fear-and-anxiety-can-affect-young-childrens-learning-and-development/> (last visited Nov. 7, 2018).

⁶ Anne Rossier Markus, Elie Andres, Kristina West, et. al, *Medicaid Covered Births, 2008 Through 2010, in the Context of the Implementation of Health Reform*, US National Library of Medicine National Institutes of Health, <https://www.ncbi.nlm.nih.gov/pubmed/23993475> (last visited Nov. 7, 2018).

⁷ Stan Dorn, John Holahan, *The Benefits of Medicaid Expansion: A Reply To Heritage's Misleading Use Of Our Work* Health Affairs Blog, <http://healthaffairs.org/blog/2013/05/03/the-benefits-of-medicaid-expansion-a-reply-to-heritages-misleading-use-of-our-work/> (last visited Nov. 7, 2018).

⁸ Caitlyn Dewey, *Immigrants are Going Hungry so Trump Won't Deport Them*, Washington Post, March 16, 2017, https://www.washingtonpost.com/news/wonk/wp/2017/03/16/immigrants-are-now-canceling-their-food-stamps-for-fear-that-trump-will-deport-them/?noredirect=on&utm_term=.f0be6439ebfe (last visited Nov. 7, 2018).

⁹ *School Meals: Community Eligibility Provision*, US Department of Agriculture Food and Nutrition Service, <https://www.fns.usda.gov/school-meals/community-eligibility-provision> (last visited Nov. 15, 2018).

¹⁰ *Report Card on Food Insecurity & Immigration: Helping our Youngest First-Generation Americans to Thrive*, Children's HealthWatch, February, 2018. <http://childrenshealthwatch.org/wp-content/uploads/Report-Card-on-Food-Insecurity-and-Immigration-Helping-Our-Youngest-First-Generation-Americans-to-Thrive.pdf> (last visited Nov. 7, 2018)

¹¹ Jyoti, DF, Frongillo, EA, and Jones, SC. *Food Insecurity Affects School Children's Academic Performance, Weight Gain, and Social Skills*, US National Library of Medicine National Institutes of Health, <https://www.ncbi.nlm.nih.gov/pubmed/16317128> (last visited Nov. 15, 2018).

¹² Rebecca Cokley and Hannah Leibson, *Trump's Public-Charge Rule Would Threaten Disabled Immigrants' Health and Safety*, Center for American Progress, August 8, 2018, <https://www.americanprogress.org/issues/disability/news/2018/08/08/454537/trumps-public-charge-rule-threaten-disabled-immigrants-health-safety/> (last visited Nov. 7, 2018).

¹³ *Current Population Survey: 2017 Annual and Economic (ASEC) Supplement*, United States Census Bureau, <https://www2.census.gov/programs-surveys/cps/techdocs/cpsmar17.pdf> (last visited Nov. 7, 2018)

¹⁴ *Only Wealthy Immigrants Need Apply*, Fiscal Policy Institute, October 10, 2018, <http://fiscalpolicy.org/wp-content/uploads/2018/10/US-Impact-of-Public-Charge.pdf> (last visited Nov. 15, 2018).

¹⁵ *Id.*