



AMERICAN PUBLIC HEALTH ASSOCIATION
For science. For action. For health.

December 10, 2018

Ms. Samantha Deshommès
Chief
Regulatory Coordination Division, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Re: DHS Docket No. USCIS-2010-0012, RIN 1615-AA22, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds

Dear Ms. Deshommès:

On behalf of the American Public Health Association, a diverse community of public health professionals who champion the health of all people and communities, I appreciate the opportunity to submit comments in response to the Department of Homeland Security's Notice of Proposed Rulemaking, "Inadmissibility on Public Charge Grounds." We are deeply concerned by the proposed changes to the longstanding public charge ground of inadmissibility, and we urge you to withdraw the rule in its entirety.

The proposed rule would drastically broaden the public benefits programs taken into consideration in the "totality of the circumstances" for individuals seeking permanent resident status or seeking admission to the United States. Under current policy, a public charge is defined as an immigrant who is "likely to become primarily dependent on the government for subsistence as demonstrated by either the receipt of public cash assistance for income maintenance, or institutionalization for long-term care at government expense."¹ If the rule is finalized in its current form, immigration officials could consider a much wider range of government programs in the public charge determination. These programs include most Medicaid programs, housing assistance programs such as Section 8 housing vouchers, project-based Section 8, the Supplemental Nutrition Assistance Program and low-income subsidies for prescription costs under Medicare Part D.

As an organization committed to strengthening the health of the public, we are deeply concerned by the changes to the public charge grounds of inadmissibility proposed in this rule. Broadening the scope of the public charge test to include this wide range of public assistance programs would deny millions of people access to basic services that are the bedrock of the public health infrastructure. The chilling effect of the proposed rule is likely to affect millions of immigrants

¹ 64 Fed. Reg. 28689

and American citizens, as evidenced by the consequences of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The 1996 welfare reform law limited immigrant eligibility for federal means-tested public benefits, however it did not amend the public charge law to change what types of programs would be considered. This generated considerable confusion about which public benefit programs would weigh negatively in a public charge determination and led to a significant decline in participation among eligible immigrants and their families in public benefit programs.² In response to these chilling effects, the then-Immigration and Naturalization Service issued administrative guidance clarifying that the public charge test applies only to those “primarily dependent on the government for subsistence,” demonstrated by receipt of public cash assistance for “income maintenance,” or federally-funded institutionalization for long-term care. The guidance specifically lists non-cash programs such as Medicare, Medicaid, food stamps, WIC, Head Start, child care, school nutrition, housing, energy assistance and emergency/disaster relief as programs not to be considered for purposes of public charge. The preamble to the 1999 Field Guidance on Public Charge clearly acknowledged that the reluctance to access benefits has an adverse impact not just on the potential recipients, but on public health and the general welfare.³ This guidance remains in effect today. For the following reasons we urge the Department to continue interpreting and applying the public charge law as currently prescribed:

If finalized, the proposed rule would create a chilling effect that would have a drastic impact on the public’s health.

Nationwide over 19 million, or one in four, children live with at least one immigrant parent, and nearly nine in ten of these children are citizens.⁴ An estimated 10.5 million children in families enrolled in public assistance programs have at least one noncitizen parent.⁵ The fear generated by this rule would put families in impossible situations where they are forced to choose between keeping their families together or enrolling in programs to keep their families healthy. The result could be drastic. The proposed rule will likely have a chilling effect in which individuals subject to the public charge test will no longer apply for public benefit programs, many of which they are eligible to receive.

Driving people away from health and nutrition services could have drastic effects on the public’s health. Parents may opt not to vaccinate their children, increasing the risk of disease outbreaks and jeopardizing herd immunity; communicable and sexually transmitted diseases may go undiagnosed leading to spread of disease, and in a time when the Centers for Disease Control and Prevention report STD rates in the U.S. are at an all-time high,⁶ and pregnant women may

² Fix, Michael and Jeffrey Passel, "Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994-97," (Washington, D.C.: The Urban Institute, 1999).

³ Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689 (March 26, 1999).

⁴ Kaiser Family Foundation, “Proposed Changes to the “Public Charge” Policies for Immigrants: Implications for Health Coverage,” (Washington, D.C.: Kaiser Family Foundation, 2018).

⁵ Batalova, Jeanne, Michael Fix, and Mark Greenberg, “Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families’ Public Benefits Use,” (Washington D.C.: Migration Policy Institute, 2018).

⁶ Centers for Disease Control and Prevention, “Sexually Transmitted Disease Surveillance 2017,” (Atlanta, GA: National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, 2018).

choose not to seek medical attention endangering themselves and their unborn children. By DHS' own estimate, disenrollment in public benefits programs by immigrants otherwise eligible could lead to worse health outcomes, such as an increased prevalence of obesity and malnutrition and reduced prescription adherence; increased prevalence of communicable diseases; increased rates of poverty and housing instability; and reduced educational attainment.⁷ Already there are reports of immigrants disenrolling and avoiding public health and nutrition programs for fear of this affecting their immigration status.^{4, 8, 9}

Limiting access to public benefits programs does not promote self-sufficiency, but instead restricts access to resources that encourage positive health behaviors and contribute to economic mobility.

DHS believes the primary benefit of the rule would be to ensure that immigrants seeking entry or extension of stay in the U.S. are self-sufficient. However, as explained in the 1999 Field Guidance, “participation in non-cash programs is not evidence of poverty or dependence.” Furthermore, the proposed rule sets impossible standards for the definition of “self-sufficient.” The proposal defines “public charge” to include anyone who uses more than 15 percent of the poverty line for a household of one in public benefits – just \$5 a day regardless of family size. This absolute standard overlooks the extent to which the person is supporting themselves. Moreover, this ignores the extensive body of research recognizing that enrollment in public assistance programs contributes to positive health outcomes, economic mobility and self-sufficiency. For example, in 2015, SNAP helped 8.4 million people out of poverty, reducing the poverty rate by 17 percent.¹⁰ Similar results can be found in Medicaid populations. A recent report from the Kaiser Family Foundation shows that increasing access to Medicaid improved utilization of health care services, improved self-reported health and improved financial security among low-income populations.¹¹ There is also ample evidence that public housing benefits have proven crucial to supporting low-income populations sustain employment, maintain their health and promote overall self-sufficiency.¹²

Including the Children’s Health Insurance Program as a negative factor in an individual’s public charge determination threatens to derail the gains made in children’s health coverage.

⁷ Dep’t of Homeland Security, “Proposed Rule: Inadmissibility on Public Charge Grounds,” 83 Fed. Reg. 51,114, 51,291 (Oct. 10, 2018) (to be codified in 8 C.F.R. § 212.22(b)(4)(i)(F)(i)).

⁸ Bovell-Ammon, Allison, Stephanie Ettinger de Cuba, Diana Cutts, and Sharon Coleman, “Trends in food insecurity and SNAP participation among immigrant families of US born young children,” (Presented at the American Public Health Association 2018 Annual Conference; San Diego, California, 2018).

⁹ Artiga, Samantha and Barbara Lyons, “Family Consequences of Detention/Deportation: Effects on Finances, Health, and Well-Being,” (Washington, D.C.: Kaiser Family Foundation, 2018).

¹⁰ Wheaton, Laura and Victoria Tran, “The Antipoverty Effects of the Supplemental Nutrition Assistance Program,” (Washington, D.C.: The Urban Institute, 2018).

¹¹ Antonisse, Larisa, Rachel Garfield, Robin Rudowitz, and Samantha Artiga, “The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review,” (Washington, D.C.: Kaiser Family Foundation, 2018).

¹² Fisher, Will, “Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children,” (Washington, D.C.: The Center on Budget and Policy Priorities, 2015).

DHS specifically requests comment on whether CHIP should be included in a public charge determination. Including this program would be at the expense of millions of children's welfare, and jeopardizes the decades of progress made in reducing health coverage disparities among children in the U.S. For many of the same reasons we oppose the inclusion of Medicaid, we strongly oppose the inclusion of CHIP.

In 1996, 15 percent of all children in the U.S. were uninsured, and 25 percent of low-income children were uninsured.¹³ CHIP was passed in 1997 to offer health care coverage for children whose families earned too much to qualify for Medicaid. Today, Medicaid covers nearly 30 million children in the United States¹⁴ and CHIP provides coverage to an additional 9 million children.¹⁵ Together these programs cover 39 percent of children in the U.S.

CHIP coverage is designed for children's health and developmental needs. There is an extensive body of research demonstrating that investing in children's health coverage is an investment in their health, academic success and future success in life.^{16,17,18} Due to the chilling effect of the rule, many eligible citizen children would likely disenroll or forgo coverage through CHIP – and health care services altogether – if their parents fear they will be subject to a public charge determination. Including this program in the public charge test could lead to the risky health behaviors discussed earlier, such as lower rates of immunization.

For more than two decades CHIP has received bipartisan support in Congress and has proved to be a successful investment in the future of millions of children. We recommend that DHS continue to exclude CHIP from consideration in a public charge determination in the final rule as this would have a drastic impact on the general welfare of generations today and in the future.

Conclusion

DHS notes that the public benefit programs included in the definition of public charge as outlined in the proposed rule are based on the Department's "preference to prioritize those programs that impose the greatest cost on the Federal government." This grossly overlooks the many long-term benefits of increasing accessing to health care coverage and nutritious foods. If finalized, this rule is likely to result in millions of individuals withdrawing from public benefits programs, including those who are not subject to the public charge test but are fearful that accessing public assistance programs will negatively affect their immigration status. The direct

¹³ Bennefield, Robert "Census Briefs: Children without Health Insurance" (Washington, D.C.: US Department of Commerce, 1998).

¹⁴ Kaiser Family Foundation, "*Health Insurance Coverage of Children 0-18, for 2017*," (Washington, D.C.: Kaiser Family Foundation, 2017).

¹⁵ Medicaid.gov, "Unduplicated Number of Children Ever Enrolled," CHIP and Medicaid, 2017, by state and nationally, available online at <https://www.medicaid.gov/chip/downloads/fy-2016-childrens-enrollment-report.pdf>.

¹⁶ Kaiser Family Foundation, "Next Steps for CHIP: What is at Stake for Children?," (Washington, DC: Kaiser Family Foundation, 2017).

¹⁷ Steven Shaw, et al., "The relationship between student health and academic performance: Implications for school psychologists," *School Psychology International*, Vol 36, Issue 2 (2015).

¹⁸ Sarah Cohodes, et al., "The Effect of Child Health Insurance Access on Schooling: Evidence from Public Insurance Expansions," National Bureau of Economic Research, NBER Working Paper 20178, (2014).

impact and chilling effect of this proposed rule threatens to erode decades of progress made in improving the public's health.

At a time when our nation faces a declining life expectancy for the third year in a row, we cannot afford to promote policies that encourage people to abstain from basic health services and limit access to adequate nutrition and housing options. I encourage DHS to immediately withdraw this rule in its entirety, and to instead focus on implementing policies that support positive health behaviors and prioritize the public's health. Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, reading "Georges C. Benjamin". The signature is written in a cursive style with a large, prominent initial "G".

Georges C. Benjamin, MD
Executive Director