NoHLA
Northwest Health Law Advocates

December 10, 2018

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

Submitted electronically at www.regulations.gov

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

Dear Chief Deshommes:

On behalf of Northwest Health Law Advocates (NoHLA), we write in response to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking (NPRM) to express our strong opposition to the changes regarding "public charge," published in the Federal Register on October 10, 2018. NoHLA is a nonprofit health care advocacy organization whose mission is to ensure that all Washington state residents, including immigrant children and families, have access to quality, affordable health care. The proposed rule would cause major harm to immigrants and their families by dissuading them from accessing needed health care, housing, and nutrition services. We urge that the rule be withdrawn in its entirety, and that long standing principles clarified in the 1999 field guidance remain in effect.

The proposed rule represents a radical change in immigration policy that goes against Washington State's values of tolerance, diversity, and inclusiveness.[1] Roughly 14% of the state's population is comprised of immigrants and 25% of the state's workforce comes from immigrant households.[2] Many immigrants accessing the programs that are targeted in this proposal are low-wage workers. Forcing them to make the impossible choice of meeting basic needs or progressing through the immigration process undermines access to critical health, food, and other supports for eligible immigrants and their families.

For example:

Health Care

- Lack of prenatal care for pregnant women leads to an increased number of high-risk labor and deliveries and poor birth and maternal health outcomes including death.
- Lack of timely and regular health screenings for children can lead to lower detection of developmental delays, lower rates of vaccinations, poorer oral health, and many other outcomes that negatively impact a child's ability to learn and grow.

[1] Gov. Inslee Exec. Order 17-01, Reaffirming Washington's Commitment to Tolerance, Diversity, and Inclusiveness (Feb. 23, 2017), https://www.governor.wa.gov/sites/default/files/exe_order/eo_17-01.pdf.
[2] Public Charge Policy Changes: Impacts on Washington State, OMB leave behind data (May 11, 2018).

- Delays or failure to seek needed medical care drives up avoidable emergency room costs, increases costly inpatient hospital stays, increases uncompensated care costs, and delays early diagnosis and treatment of serious medical conditions.

Nutrition Services

- Increased food insecurity, especially among children losing WIC and SNAP benefits, leads to negative health outcomes including anemia, diabetes, heart disease, and depression, as well as increased need for medical care.
- Lack of basic food for children has consequences not only for long-term health outcomes but also social, emotional, and cognitive development.

Housing

- Increased homelessness has profound and lasting impacts on children and their families, often leading to severe emotional distress, mental illness, chronic health conditions, and impairments in learning, behavior, and physical and mental well-being.[3]

The proposal will erode the safety-net in our state, harming individuals, families, and our communities.

Further, the rule's inappropriate restrictions on immigration will disrupt the personal lives and livelihoods of many working immigrants and their families. In so doing, it will disadvantage businesses in Washington and other states. Twenty-four Washington business leaders were among 120 nationally who signed a letter opposing the proposed regulation, saying that the proposed rule will "create substantial, unprecedented, and unnecessary obstacles" that will impose tremendous costs to businesses and "close the door on global talent."[4] These leaders predict that this will "slow economic growth and prevent businesses from expanding." And they rightly conclude, "It makes no sense to shut out talented workers because they have children, mortgages, or student loans—all traditional elements of achieving the American Dream."

The proposed rule departs from longstanding policy, is inconsistent with how public charge has been historically understood, and defies clear Congressional intent that recognizes the importance of access to preventive care and nutrition benefits for immigrants.

The proposed rule would alter the public charge test dramatically, abandoning the enduring meaning of a public charge as a person who depends on the government for subsistence, changing it to anyone who simply receives assistance with health care, nutrition, or housing. Under current policy, a public charge is defined as an immigrant who is “likely to become primarily dependent on the government for subsistence.” The proposed rule radically expands the definition to include any immigrant who simply “receives one or more public benefits.” This shift drastically increases the scope of who can be considered a public charge to include not just people who receive benefits as the main source of support, but also people who use basic needs programs to supplement their earnings from low-wage work.

---

[3] All examples gathered from Gov. Inslee letter to OMB, April 24, 2018.

[4] "American Business Leaders Respond to the Proposed 'Public Charge Rule,' A public comment submitted to the Department of Homeland Security on December 7, 2018" available at https://www.boundless.com/public-charge-business-leaders/

The proposed rule would reverse more than a century of existing law, policy, and practice in interpreting the public charge law, when the receipt of non-cash benefits has never been the determining factor in deciding whether an individual is likely to become a public charge. For almost two decades, U.S. immigration officials have explicitly reassured, and immigrant families have relied on that reassurance, that participation in programs like Medicaid and SNAP (formerly food stamps) would not affect their ability to become lawful permanent residents.[5]

Congress has had several opportunities to amend the public charge law but has only affirmed the existing administrative and judicial interpretations of the law. The 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) limited eligibility for "federal means-tested public benefits" to "qualified immigrants" and limited eligibility of lawful permanent residents for "means-tested public benefits" during their first five years in the U.S., but Congress did not amend the public charge law to change what types of programs should be considered. Instead, that same year, in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Congress merely codified the case law interpretation of public charge by adding the "totality of circumstances" test to consider the applicant's age, health, family status, assets, resources, financial status, education, and skills to the statute. Congress also made the affidavits of support legally enforceable contracts. Accordingly, since 1996, having such an affidavit of support generally has been sufficient to overcome any concerns about public charge.

In response to confusion and concerns that some consular officials and employees of the then-Immigration and Naturalization Service (INS) were inappropriately scrutinizing the use of health care and nutrition programs, and the strong evidence of chilling effects from the 1996 law, INS issued an administrative guidance in 1999 which remains in effect today -- 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 institutionalization for long-term care at Government expense.[6] The guidance specifically excludes non-cash programs such as Medicare, Medicaid, food stamps, WIC, Head Start, child care, school nutrition, housing, energy assistance, emergency/disaster relief from consideration for purposes of public charge.[7] The 1999 NPRM preamble makes clear that it was not seen as changing policy from previous practice, but was issued in response to the need for a "clear definition" so that immigrants can make informed decisions and providers and other interested parties can provide "reliable guidance."[8]

The rule would potentially deter as many as approximately 553,000 people in Washington State from receiving critical supports.

The proposed rule would create a chilling effect -- making individuals afraid to access programs their tax dollars help support, including limiting access to essential health care, nutritious food, and secure housing. The result may be increased poverty, hunger, ill health and unstable housing with profound consequences for families' wellbeing and long-term success. Among the most harmed by the proposed

---

[5] https://www.uscis.gov/greencard/public-charge

[6] 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).

[7] 64 Fed. Reg. 28689

[8] Inadmissibility and Deportability on Public Charge Grounds, A Proposed Rule by the Immigration and Naturalization Service on 05/26/1999, 64 Federal Register 28676.

rule are children, including U.S. citizen children, who would likely decrease participation in support programs, despite remaining eligible.

Based on benefit enrollment patterns observed in the wake of welfare reform during the 1990s, it is predicted that immigrants' use of health, nutrition, and social services will decline significantly if the proposed public charge rule is finalized.[9] For instance, researchers found that after new eligibility restrictions were implemented for recent immigrants as part of welfare reform, there was 25% disenrollment from Medicaid among children of foreign-born parents even though the majority of these children were not subject to the changes and remained eligible.[10]

Approximately 553,000 people are at risk of withdrawing from benefits due to the proposed public charge rule, accounting for an estimated 7.5% of Washington State's population. This number represents individuals and family members with at least one noncitizen in the household and who live in households with earned incomes under 250% of the federal poverty level. Of these 553,000 people, approximately 205,000 are children under 18 years of age who are family members of at least one noncitizen or are noncitizens themselves.[11] In Washington, 30% of children are part of immigrant households and over 733,000 children are enrolled in the state's Medicaid program.[12] An estimated 222,300 noncitizens in the state of Washington are enrolled in Medicaid/CHIP[13] as well as 240,000 U.S. citizen children who have at least one immigrant parent.[14] If the proposed rule leads to disenrollment rates between 15 percent and 35 percent, comparable to rates experienced as a result of the 90s welfare reform, 33,345 to 77,805 Medicaid/CHIP enrollees could disenroll,[15] and 10,000 to 24,000 lawfully present adults and 3,000 to 8,000 lawfully present children could disenroll.[16] These estimates may actually underestimate the impact of the proposed rule on benefit usage as welfare reform in the 1990s did not affect immigration status directly.[17] Further, in the current political climate, with efforts to

---

[9] Jeanne Batalova, Michael Fix, and Mark Greenberg "Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use" (Washington, DC: Migration Policy Institute, 2018) https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families.

[10] Neeraj Kaushal and Robert Kaestner, "Welfare Reform and health insurance of Immigrants," Health Services Research, 40(3), (June 2005), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/pdf/hesr_00381.pdf.

[11] 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 20122016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt health, 9/30/2018. Found online at https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population.

[12] Washington State Health Care Authority, Medical Assistance Enrollment Data (Nov. 26, 2018).

[13] Jeanne Batalova, Michael Fix, and Mark Greenberg "Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use" (Washington, DC: Migration Policy Institute, 2018) https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families.

[14] Gov. Inslee letter to OMB, April 24, 2018.

[15] *See* Samantha Artiga, Raphael Garfield, and Anthony Damico "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid" (Washington, DC: Kaiser Family Foundation, 2018). https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaid/.

[16] Washington State Atty General Public Charge public comment submitted to the Department of Homeland Security on Dec. 10, 2018.

[17] Samantha Artiga, Raphael Garfield, and Anthony Damico "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid" (Washington, DC: Kaiser Family Foundation, 2018) https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaid/.

reduce legal immigration for the first time in decades and increased arrests and deportations, fear of immigration consequences of using public benefits could be even greater.[18]

In Washington State, the uninsured rate declined from 14 percent in 2013 to 5.4 percent in 2016, resulting in a drop of uncompensated care in Washington from $2.368 million to $932 million. Each single percentage-point decline in the uninsured rate is associated with a $167 million drop in uncompensated care. Fear of accessing Medicaid would likely reverse this trend via an uptick of uninsured immigrant households and result in an increase in uncompensated care, creating a significant financial threat to many hospitals and providers in the state.

The proposed regulation has already made immigrant families afraid to seek programs that support their basic needs. We have heard several accounts from health care navigators about immigrant clients refusing to apply, enroll, or use benefits such as Medicaid, WIC, or subsidized housing they became eligible for. Some of the clients include refugees and other humanitarian entrants who are not subject to the public charge test. However, because of the fear, confusion, and overall anti-immigrant environment, these individuals and families have chosen to forgo benefits they are legally eligible for.

Pregnant women

The proposed rule would create barriers to accessing care for pregnant women that could hasten the rise in maternal mortality and have serious health implications for their children. This problem is especially acute for immigrant women of reproductive age, with 27 percent of them being uninsured.[19] With maternal mortality on the rise, a bipartisan group of Senators support increasing federal funding to expand access to services that can prevent maternal death.[20]

A lack of prenatal care and nutrition assistance for mothers could have serious implications for their children, affecting their birth and early health outcomes, with negative consequences that may extend decades into the future, diminishing their opportunity to thrive in tangible and entirely preventable ways.[21] In addition to prenatal care, nutrition assistance is integral to healthy birth outcomes. Researchers comparing the long-term outcomes of individuals in different areas of the country when SNAP expanded nationwide in the 1960s and early 1970s found that mothers that accessed SNAP during pregnancy gave birth to fewer low-birth-weight babies.[22]

---

[18] Jeanne Batalova, Michael Fix, and Mark Greenberg "Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use" (Washington, DC: Migration Policy Institute, 2018) https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families.

[19] National Women's Law Center, *If You Care About Immigration, You Should Care About Reproductive Justice*, (Oct. 2016), available at https://nwlc.org/wp-content/uploads/2016/09/Immigration-Fact-Sheet.pdf

[20] Nina Martin, U.S. Senate Committee Proposes $50 Million to Prevent Mothers Dying in Childbirth (June 28, 2018). https://www.propublica.org/article/us-senate-committee-maternal-mortality-prevention-proposal

[21] Sharon Parrot, et al., *Trump "Public Charge" Rule Would Prove Particularly Harsh for Pregnant Women and Children*, Center on Budget and Policy Priorities, (May 1, 2018), *available at* https://www.cbpp.org/research/poverty-and-inequality/trump-public-charge-rule-would-prove-particularly-harsh-for-pregnant.

[22] Douglas Almond, Hillary Hoynes, and Diane Schanzenbach, "Inside the War on Poverty: The Impact of Food Stamps on Birth Outcomes," *The Review of Economics and Statistics*, 93(2), May 2011, https://www.mitpressjournals.org/doi/pdfplus/10.1162/REST_a_00089; and Hilary Hoynes, Diane Whitmore Schanzenbach, and Douglas Almond, "Long-Run Impacts of Childhood Access to the Safety Net," *American*

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.[23] In states such as Washington that have chosen to provide Medicaid coverage to all lawfully present pregnant women, the link between parent and child well-being is even more direct: a mother's use of health care during her pregnancy could prevent her from later extending or improving her immigration status. But without this care, there could be tragic impacts on her child's birth, growth and development.

Individuals living with disabilities

The proposed regulations create significant hardships for and discriminate against lawful immigrants with disabilities by denying them an opportunity to benefit from an adjustment in their immigration status equal to that available to immigrants without disabilities.[24] Under the proposal, the Department will consider a wide range of medical conditions, many of which constitute disabilities, as well as the existence of disability itself, in determining whether an immigrant is likely to become a public charge. Although DHS states that disability will not be the "sole factor," in that determination, the Department fails to offer any accommodation for individuals with disabilities and instead echoes the types of bias and "archaic attitudes" about disabilities that the Rehabilitation Act was meant to overcome.[25]

The proposal also discriminates against people with disabilities by defining an immigrant as a public charge for using (for the specified periods and amounts) non-cash benefits which individuals with disabilities rely on disproportionately, often due to their disability. For example, about one-third of adults under age 65 enrolled in Medicaid have a disability, compared with about 12% of adults in the general population. Medicaid is the largest insurer for long-term services and supports, as well as behavioral health care, filling the gaps left by other insurance plans that do not cover many of these services. Most home and community-based services are not available through private insurance, and few people have the resources to pay for these costs out of pocket. The proposed rule's consideration of Medicaid-funded community services in the public charge determination will harm individuals with disabilities that rely on Medicaid to live, work, attend school and participate in their communities. Likewise, more than one-quarter of people who use SNAP benefits for nutritional support are also disabled. Many of these individuals rely upon such benefits so that they can continue to work, stay healthy, and remain productive members of the community.

By deeming immigrants who use such programs as a public charge, the regulations will disparately harm individuals with disabilities and impede their ability to maintain the very self-sufficiency the Department purports to promote and which the Rehabilitation Act sought to ensure

---

Economic Review, 106(4):903–934, April 2016, https://pdfs.semanticscholar.org/c94b/26c57bb565b566913d2af161e555edeb7f21.pdf.

[23] Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689 (May 26, 1999).

[24] 6 CFR 15.30(b)(1)(ii), (iii), (iv)

[25] School Bd. of Nassau Cty. v. Arline, 480 U.S. 273, 279 (1987).

Children with special health care needs

According to estimates from the National Survey of Children's Health, roughly 2.6 million children in immigrant families have a disability or special health care need.[26] Children with special health and developmental needs tend to require medical, behavioral, and/or educational services above and beyond what typically developing children need to keep them healthy and promote positive development.

These special needs make children with disabilities in immigrant families vulnerable to hardship due to the economic burdens associated with requiring specialized care. Parents of children with disabilities typically work fewer hours and ultimately earn less income due to their children's caregiving needs.[27] As a group, children with disabilities are more likely to live in low-income households and to experience food insecurity and housing instability, making programs like SNAP and housing assistance vital to their wellbeing.[28] Ensuring that kids with special health care needs have access to services helps their parents maintain work and improve earnings. The proposed rule would restrict immigrant families' access to public anti-poverty programs and further exacerbate the economic hardships that children with disabilities and other special needs already experience.

While many children in the U.S.—both in immigrant and native-born families—depend on public health insurance programs, Medicaid is uniquely critical for children with disabilities. Roughly half of all children with a disability or other special health care rely on public insurance for a variety of services and supports, including respite care; occupational, physical, or speech therapies; and prescription drugs. [29] These services are critical to keep children healthy and thriving, but they are typically costly—even with insurance—and are out of reach for families who lack health coverage. At minimum, forgoing critical services could hamper children's developmental progress. For some families, the stakes are even higher: comprehensive coverage through these programs is necessary to keep their children alive.

Individuals living with HIV/ AIDS

The proposed rule would cause disproportionate and discriminatory harm to individuals living with HIV/AIDS. Over 14,000 individuals in Washington State are living with HIV/AIDS.[30] People with HIV,

---

[26] Data query, National Survey of Children's Health (2016)

[27] Sloan Work and Family Research Network, Questions and Answers about Employed Parents Caring for Children with Disabilities, https://workfamily.sas.upenn.edu/sites/workfamily.sas.upenn.edu/files/imported/pdfs/Child_Disability.pdf.

[28] Rebecca Ullrich, *Cuts to Medicaid Would Harm Young Children with Disabilities*, Center for American Progress, 2017, https://www.americanprogress.org/issues/early-childhood/reports/2017/05/03/431766/cuts-medicaid-harm-young-children-disabilities; Susan L. Parish, Roderick A. Rose, Megan Andrews, et al., *Material Hardship in US Families Raising Children with Disabilities: Research Summary and Policy Implications,* UNC School of Social Work, 2009, https://www.realeconomicimpact.org/data/files/reports/outside%20reports/material%20hardship%20children%20with%20disabs.pdf.

[29] MaryBeth Musumeci and Julia Foutz, Medicaid's Role for Children with Special Health Care Needs: A Look at Eligibility, Services, and Spending, Kaiser Family Foundation, 2018, https://www.kff.org/medicaid/issue-brief/medicaids-role-for-children-with-special-health-care-needs-a-look-at-eligibility-services-and-spending/.

[30] https://www.doh.wa.gov/Portals/1/Documents/Pubs/150-030-WAHIVSurveillanceReport2018.pdf

either symptomatic or asymptomatic are protected by the Americans with Disabilities Act (ADA).[31] Federal law prohibits disability discrimination by its executive agencies, requiring that they provide reasonable accommodation to disabled individuals so they cannot be denied meaningful access to agencies' services and benefits—including immigration benefits—based on their disabilities. [32] The proposed rule would use an HIV diagnosis to exclude both applicants and applicants seeking to unite with disabled family members.

Not only does this send the signal that individuals with HIV/AIDS and other chronic health conditions are "undesirable"—drawing disturbing parallels to the 1987 HIV travel and immigration ban overturned in 2010[33]–but the proposed rule ignores the reality that a chronic illness such as HIV/AIDS is not an accurate indicator of future self-sufficiency and full-time employment capabilities. In June this year, the U.S. Bureau of Labor Statistics released a Current Population Survey (CPS) showing that in 2017 the labor force participation rate for those with a disability had actually increased.[34] Indeed, with appropriate treatment, care and support, persons living with HIV/AIDS can expect to live long, healthy and productive lives.

Under the proposed rule, HIV-positive applicants and others with chronic health conditions would be required to purchase private, "non-subsidized medical insurance." HIV/AIDS treatment, known as anti-retroviral therapy (ART), is prohibitively expensive in the United States.[35] Even those with private insurance or certain employer-based insurance, usually have no choice but to apply for government subsidies for the substantial portion that their insurance plan does not cover.[36] In fact, the rule may actually incentivize U.S citizens/permanent residents to terminate their subsidized healthcare in order to remain eligible to petition for their family members living abroad. Reports are already emerging of individuals who are considering waiting to begin life-saving ART in the belief that this will ensure their eligibility to reunite their families.[37] Such scenarios call to attention the catastrophic public health implications that this proposed rule threatens to create, undoing hard won progress towards ending the HIV/AIDS epidemic in our state and nation.

Seniors

The number of seniors in the United States who are immigrants is growing. Between 1990 and 2010, the number of immigrants age 65 and older grew from 2.7 million to nearly 5 million.[38] This is due to aging of the immigrant population who arrived during the 1980s and 90s as well as the rise in naturalized citizens who sponsor their parents to immigrate to the U.S. In fact, the number of parents of U.S. citizens who have been admitted as legal permanent residents nearly tripled between 1994 and 2017

---

[31] Bragdon v. Abbott, 524 U.S. 624 (1998)

[32] 29 U.S.C. §794(a), Rehabilitation Act of 1973, section 504

[33] Human Rights Campaign www.hrc.org/press/after-22-years-hiv-travel-and-immigration-ban-lifted

[34] Current Population Survey, 2016 and 2017 annual averages. U.S. Bureau of Labor Statistics

[35] https://betablog.org/hiv-drugs-price/

[36] US National Institute of Health https://aidsinfo.nih.gov/guidelines/html/1/adult-and-adolescent-arv/459/cost-considerations-and-antiretroviral-therapy

[37] The Body http://www.thebody.com/content/81028/public-charge-rule-devastating-hiv-immigrants.html?ic=tbhtrump

[38] Jeanne Batalova, Migration Policy Institute, Senior Immigrants in the United States (May 30, 2012), https://www.migrationpolicy.org/article/senior-immigrants-united-states

and now account for almost 15% of all admissions and almost 30% of family-based admissions.[39] In Washington State alone there are 43,616 noncitizens age 62 and older.[40]

If this proposed rule is implemented, many U.S. citizens may no longer be able to welcome their own parents into the country because it will be nearly impossible for older adults to pass the "public charge" test under the new criteria. Instead of recognizing the value of intergenerational families who support each other, the proposed rule labels parents and grandparents as a burden because of their age and health needs and ignores the critical roles many grandparents play in caring for their grandchildren and other family members, often enabling them to work. Furthermore, this rule will impact seniors living in immigrant families in Washington State who will be afraid to access services they need. Over 22,000 noncitizens age 62 and older live in low-income households,[41] meaning they are likely to rely on public assistance programs to meet their basic needs.

Having health insurance is especially important for older adults because they have greater health care needs. Medicare is a lifeline for most seniors, providing coverage for hospital, doctors' visits, and prescription drugs, but many immigrant seniors are not eligible for Medicare. Moreover, many Medicare beneficiaries rely on other programs to help them afford out-of-pocket costs. Almost 1 in 3 Medicare beneficiaries enrolled in Part D prescription drug coverage get "Extra Help" with their premiums and copays through the low-income subsidy.[42] Nearly 7 million seniors 65 and older are enrolled in both Medicare and Medicaid, and 1 in 5 Medicare beneficiaries relies on Medicaid to help them pay for Medicare premiums and cost-sharing.[43] Medicaid is also critical for long-term care, home and community-based services, dental, transportation, and other services Medicare does not cover and older adults could otherwise not afford.

Survivors of domestic violence and sexual assault

The public charge rule will have a detrimental impact on survivors of domestic violence and sexual assault and their ability to obtain and maintain safety as a result of abuse. While survivors seeking

---

[39] *Comparing* Dept. of Homeland Security, Office of Immigration Statistics, *2017 Yearbook of Immigration Statistics*, Table 7, *available at* www.dhs.gov/sites/default/files/publications/2016%20Yearbook%20of%20Immigration%20Statistics.pdf *with* Immigration & Naturalization Service, Office of Policy & Planning, *Legal Immigration, Fiscal Year 1997*, Table 1, *available at* www.dhs.gov/sites/default/files/publications/INS_AnnualReport_LegalImmigration_1997_1.pdf.; *see also* Stacy Torres and Xuemei Cao, New York Times, "The Immigrant Grandparents America Needs," (Aug. 20, 2018), *available at* www.nytimes.com/2018/08/20/opinion/family-immigration-grandparents.html.

[40] Manatt, Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard (Oct. 11, 2018), https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard

[41] Manatt, Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard (Oct. 11, 2018), https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard

[42] Kaiser Family Foundation, Medicare Part D in 2018: The Latest on Enrollment, Premiums, and Cost Sharing (May 17, 2018), *available at* www.kff.org/medicare/issue-brief/medicare-part-d-in-2018-the-latest-on-enrollment-premiums-and-cost-sharing/.

[43] Kaiser Family Foundation, Medicaid Enrollment by Age, www.kff.org/medicaid/state-indicator/medicaid-enrollment-by-age/?dataView=1&currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D

immigration status are exempt from the application of the public charge ground of inadmissibility when adjusting through the VAWA or U pathways*, i.e., see* INA 212(a)(4)(E), and proposed 8 CFR 212.25, many survivors of domestic violence and sexual assault and their family members do not seek immigration status in those named categories, and will be harmed as a consequence. The proposed public charge rule will harm not only survivors who are seeking immigration status or entry into the United States, but also U.S. born survivors, or survivors who already have lawful status in households where family members will be seeking entry or immigration status in the future.

Nutrition, health care, and housing programs benefits are a necessity for survivors of domestic violence and sexual assault, allowing them to rebuild their lives after violence. In a 2017 survey of service providers working with survivors of violence, over 88% of respondents said that SNAP is a very critical resource for a significant number of domestic violence and sexual assault survivors. Specifically, nearly 80% of respondents reported that most domestic violence survivors rely on SNAP to help address their basic needs and to establish safety and stability, and 55% of respondents said the same is true of most sexual assault survivors.[44] Access to assistance programs is an important factor in survivors' decision-making about whether and how they can afford to leave a dangerous situation, and in planning how to keep themselves and their children healthy, well, and housed.[45] As this data illustrates, publicly-funded resources are imperative for the safety of abuse and sexual assault survivors.[46] The Centers for Disease Control has concluded that improving financial security for individuals and families can help reduce and prevent intimate partner violence.[47] Without sufficient resources, survivors are either compelled back into an abusive relationship, or face destitution and homelessness.[48]

Children's Health Insurance Program (CHIP) should not be included in a public charge determination.

For many of the same reasons that we oppose the inclusion of Medicaid as a factor in determining public charge, we adamantly oppose the inclusion of CHIP. CHIP is a program for working families who earn too much to be eligible for Medicaid without a share of cost. Making the receipt of CHIP a negative factor in the public charge assessment, or including it in the "public charge" definition, would likely lead to many eligible children foregoing health care benefits, both because of the direct inclusion in the

---

[44] Goodman, S. *The Difference Between Surviving and Not Surviving: Public Benefits Programs and Domestic and Sexual Violence Victims' Economic Security* (Jan. 2018), available at https://vawnet.org/material/difference-between-surviving-and-not-surviving-public-benefits-programs-and-domestic-and

[45] Lyon, E., Lane, S., & Menard, A. (2008). Meeting Survivors' needs: A multi-state study of domestic violence shelter experiences. Washington, DC: National Institute of Justice. At: http://www.vawnet.org/Assoc_Files_VAWnet/MeetingSurvivorsNeeds-FullReport.pdf; Lyon, E., Bradshaw, J., & Menard, A. (2011). *Meeting Survivors' Needs through Non-Residential Domestic Violence Services & Supports: Results of a Multi-State Study.* Harrisburg, PA: National Resource Center on Domestic Violence. At: http://www.vawnet.org/Assoc_Files_VAWnet/DVServicesStudy-FINALReport2011.pdf; Kimerling, R., Alvarez, J., Pavao, J., Mack. K. P., Smith, M. W., & Baumrind. N. (2009). *Unemployment Among Women: Examining the Relationship of Physical and Psychological Intimate Partner Violence and Posttraumatic Stress Disorder.* Journal of Interpersonal Violence**,** Vol. 24, No. 3, at 450-463.

[46] Eleanor Lyon, "Several studies in the past ten to fifteen years have documented the importance of economic resources for battered women's decision-making"

[47] Centers for Disease Control (2017). Preventing Intimate Partner Violence Across the Lifespan: A Technical Package of Programs, Policies, and Practices. Available at https://www.cdc.gov/violenceprevention/pdf/ipv-technicalpackages.pdf

[48] *See* Eleanor Lyon, *Poverty, Welfare and Battered Women: What Does the Research Tell Us?"* National Electronic Network on Violence Against Women 1 (Dec. 1997).

public charge determination as well as the chilling effect detailed elsewhere in these comments. Over 63,000 children across Washington state depend on CHIP for their health care.[49]

Moreover, inclusion of CHIP would be counter to Congress' explicit intent in expanding coverage to lawfully present children and pregnant women. Section 214 of the 2009 Children's Health Insurance Program Reauthorization Act (CHIPRA) gave states a new option to cover, with regular federal matching dollars, lawfully residing children and pregnant women under Medicaid and CHIP during their first five years in the U.S. This was enacted because Congress recognized the public health, economic, and social benefits of ensuring that these populations have access to care.

Since its inception in 1997, CHIP has enjoyed broad, bipartisan support based on the recognition that children need access to health care services to ensure their healthy development. CHIP can have a positive impact on health outcomes, including reductions in avoidable hospitalizations and child mortality and improves health which translates to educational gains, with potentially positive implications for both individual economic well-being and overall economic productivity.[50] CHIP has been a significant factor in dramatically reducing the rate of uninsured children across the U.S. According to the Kaiser Family Foundation, between 1997 when CHIP was enacted through 2012, the uninsured rate for children fell by half, from 14 percent to seven percent. A 2018 survey of the existing research noted that the availability of "CHIP coverage for children has led to improvements in access to health care and to improvements in health over both the short-run and the long-run."[51] Continuous, consistent coverage without disruptions is especially critical for young children, as experts recommend 16 well-child visits before age six, more heavily concentrated in the first two years, to monitor their development and address any concerns or delays as early as possible.[52]

Use of public benefits by noncitizen children under age 18 should not be considered in public charge determinations.

We strongly believe that receipt of benefits as a child should not be taken into account in the public benefits determination as it provides little information on their future likelihood of receiving benefits. If anything, receipt of benefits that allow children to live in stable families, be healthy and succeed in school will contribute to the future integration and contribution to society of kids who grow up, develop, learn and complete their education and training in the United States. The value of access to public benefits in childhood has been documented repeatedly. Safety net programs such SNAP and Medicaid have short and long-term health benefits and are crucial levers to reducing the intergenerational transmission of poverty.[53] Moreover, negatively weighing a child's enrollment in

---

[49] Washington State Health Care Authority, Medical Assistance Enrollment Data (Nov. 26, 2018).
[50] Kaiser Family Foundation, *The Impact of the Children's Health Insurance Program (CHIP): What Does the Research Tell Us?,* Jul. 2014, https://www.kff.org/medicaid/issue-brief/the-impact-of-the-childrens-health-insurance-program-chip-what-does-the-research-tell-us/.
[51] Lara Shore-Sheppard, "CHIP and Medicaid: Filling in the Gap in Children's Health Insurance Coverage" *Econofact*, Jan. 22, 2018, https://econofact.org/filling-in-the-gap-of-childrens-health-insurance-coverage-medicaid-and-chip.
[52] Elisabeth Wright Burak, Georgetown Center for Children and Families, *Promoting Young Children's Healthy Development in Medicaid and the Children's Health Insurance Program (CHIP),* Oct. 2018, https://ccf.georgetown.edu/wp-content/uploads/2018/10/Promoting-Healthy-Development-v5-1.pdf.
[53] Page, Marianne, "Safety Net Programs Have Long-Term Benefits for Children in Poor Households", Policy Brief, University of California, Davis, 2017 https://poverty.ucdavis.edu/sites/main/files/file-attachments/cpr-health_and_nutrition_program_brief-page_0.pdf

health and nutrition programs would be counter to Congressional intent under both the 2009 CHIPRA and section 4401 of the Farm Security and Rural Investment Act of 2002, which restored access to what was then called Food Stamps (now the Supplemental Nutrition Assistance Program, SNAP) to immigrant children.

The 36-month lookback period for considering previous use of public benefits is inappropriate.

We strongly oppose any lookback period for use of public benefit programs. Inclusion of a retrospective test is fundamentally inconsistent with the forward-looking design of the public charge determination as mandated by the INA. Although the proposed rule acknowledges that the public charge determination is supposed to be prospective, the proposed criteria used to determine whether an applicant will be a public charge are actually retrospective and offered without any evidence of its relevance to the determination of whether an immigrant will become dependent on the government for support in the future. There is significant data on how generations improve their economic contributions over time and discouraging families from receiving health, nutrition, housing, or other supports for themselves and their families will only make it harder for them to achieve economic security in the future.

Moreover, numerous studies as referenced elsewhere in these comments, point to the positive long-term effects of receipt of health, nutrition and housing programs. The proposed rule ignores that public programs are often used as work supports which empower future self-sufficiency. Using benefits can help individuals and their family members become healthier, stronger, and more employable in the future. Receipt of benefits that cure a significant medical issue or provide an individual with the opportunity to complete their education can be highly significant positive factors that contribute to future economic self-sufficiency.

The effective date of the rule should be delayed in order to help "public benefit granting agencies" adjust systems.

Implementation of the proposed rule would create new challenges and impose a tremendous burden on state and local agencies that administer public benefit programs. The proposal should not be implemented at all, but if it is, implementation should be delayed for as long as possible.

For example, the inclusion of Medicaid and SNAP in a public charge review will undermine Washington state efforts to streamline enrollment processes between different public assistance programs. Washington state, similar to other states, utilizes a single online application that permits an individual to apply for or pre-screen eligibility for multiple public assistance programs at one time.[54] The proposed rule would permit immigration officials to review an individual's attempt to simply *apply* for Medicaid or SNAP benefits.[55] This proposed provision will discourage Washington and other states from continuing

---

[54] *See* Urban Institute, "Changing Policies to Streamline Access to Medicaid, SNAP, and Child Care Assistance" (Mar. 2016), https://www.urban.org/sites/default/files/publication/78846/2000668-Changing-Policies-to-Streamline-Access-to-Medicaid-SNAP-and-Child-Care-Assistance-Findings-from-the-Work-Support-Strategies-Evaluation.pdf; *see also* Ctr. for Budget and Policy Priorities, "Modernizing and Streamlining WIC Eligibility Determination and Enrollment Processes," 18 (Jan. 6, 2017), https://www.cbpp.org/sites/default/files/atoms/files/1-6-17fa.pdf.
[55] 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)).

with efforts to develop innovative enrollment processes, and likewise discourage individuals from using uniform or joint applications or pre-screening tools where an implicated program is listed. This will also impact applications and enrollment in state-funded programs and Emergency Medicaid that are included in the single application.

****

For these reasons, DHS should immediately withdraw its proposal, and dedicate its efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants to support themselves and their families in the future. If we want our communities to thrive, everyone in those communities must be able to stay together and get the care, services and support they need to remain healthy and productive.

Thank you for your consideration of our comments on the proposed public charge rulemaking.

Sincerely,

Huma Zarif
Staff Attorney
Northwest Health Law Advocates

Janet Varon
Executive Director
Northwest Health Law Advocates