Catholic Health Association of the United States

A Passionate Voice for Compassionate Care

December 10, 2018

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

REF: DHS Docket No. USCIS-2010-0012

Re: Inadmissibility on Public Charge Grounds: Notice of Proposed Rulemaking

Dear Ms. Deshommes:

The Catholic Health Association of the United States appreciates the opportunity to submit these comments on the Department of Homeland Security's (DHS) proposed rule on Inadmissibility on Public Charge Grounds published in the Federal Register on October 10, 2108 (83 Fed. Reg. 511144). Because we believe the proposed rule will, and already has, result in harm both to immigrants and citizens; will impose added burdens on our nation's health care system; and will unduly prejudice low-income immigrants while failing to achieve its stated goal of immigrant self-sufficiency, **CHA opposes the proposed changes and strongly urges you not to finalize the rule.**

CHA is the national leadership organization of the Catholic health ministry, representing more than 2,000 Catholic health care sponsors, systems, hospitals, long-term care facilities and related organization across the continuum of care. CHA represents the largest not-for-profit providers of health care services in the nation. With more than more than 5 million admissions to Catholic hospitals each year, including one million Medicaid admissions, 1 in 6 patients in the United States is cared for in a Catholic hospital each year. All 50 states and the District of Columbia are served by Catholic health care organizations and approximately 750,000 individuals are employed in Catholic hospitals.

As a Catholic health ministry, our mission and our ethical standards in health care are rooted in and inseparable from the Catholic Church's teachings about the dignity of each and every human person, created in the image of God. These values form the basis for our steadfast commitment to the compelling moral implications of our heath care ministry and have driven CHA's long history of insisting on and working for the right of everyone to affordable, accessible health care, without limits or variation based on age, race, ethnicity, or financial means, or one's health,

immigration or employment status. Our members are committed to providing health care services to any person in need of care, without regard to race, color, national origin, sex, age, or disability, or any other category or status.

The social teachings of the Catholic Church also provide the foundation for how CHA's members serve immigrants and how our health ministry addresses immigration policy. In their 2003 pastoral letter on immigration *Strangers No Longer*, the bishops of the United States stated that regardless of their legal status, immigrants, like all persons, possess inherent human dignity which should be respected. The Catechism of the Catholic Church teaches that "The more prosperous nations are obliged, to the extent they are able, to welcome the foreigner in search of the security and means of livelihood which he cannot find in his country of origin. Public authorities should see to it that the natural right is respected that places a guest under the protection of those who receive him."[1] As Pope Francis said when he addressed the U.S. Congress:

> In recent centuries, millions of people came to this land to pursue their dream of building a future in freedom. We, the people of this continent, are not fearful of foreigners, because most of us were once foreigners. I say this to you as the son of immigrants, knowing that so many of you are also descended from immigrants. . . . when the stranger in our midst appeals to us, we must not repeat the sins and the errors of the past. We must resolve now to live as nobly and as justly as possible, as we educate new generations not to turn their back on our 'neighbors' and everything around us.[2]

As a Catholic ministry, CHA shares this commitment to helping those who have come to the United States from other countries. Catholic health care organizations serve immigrants, including refugees and victims of human trafficking, in their clinics, emergency rooms, and in their facilities. Catholic health care also employs many people who have left their homeland, seeking a better life for themselves and their communities. The Catholic health ministry has long supported access to health care for all immigrants.

- **Public Charge Under Current Law**

The INA provides that applicants for admission to the U.S. or adjustment in status must be assessed to determine whether they are likely to become a public charge. The statute provides that immigration officials are to consider several factors in making this determination: the applicant's age, health, family status, financial status (including assets and resources) and education and skills. A determination that a person is likely to become a public charge if allowed to come to the U.S. renders him or her inadmissible.[3]

---

[1] Catechism of the Catholic Church [2241].
[2] Pope Francis, Address to U.S. Congress, Sept. 24, 2015.
[3] Immigration and Nationality Act (INA) § 212(a)(4), 8 U.S.C. §1182(a)(4).

The term "public charge" has never had a precise statutory definition. In 1999 the Immigration and Naturalization Service issued guidance to define public charge as one who is likely to become "primarily dependent on the government for subsistence, as demonstrated by either (1) the receipt of public cash assistance for income maintenance or (2) institutionalization for long-term care at Government expense."[4] Thus, the use of cash assistance programs such as Supplemental Security Income, Temporary Assistance for Needy Families, and State and local General Assistance, as well as Medicaid-funded longer term institutional care could be considered when assessing whether, given the totality of the circumstances, an applicant might be a public charge. The 1999 guidance did not include non-cash forms of assistance, because they reflect broader policy decisions to promote public interests such as health, nutrition and education, and are supplemental in nature, helping low income working families to become self-sufficient.[5]

- **The Proposed Rule**

The proposed rule would significantly alter the criteria used in making a public charge determination. DHS proposes to define "public charge" to mean "an alien who receives one or more public benefit." DHS also proposes to add several forms of non-cash programs to the types of public benefits that must be considered: most Medicaid services[6], Medicare Part D subsidies for low-income individuals, the Supplemental Nutrition Assistance Program (SNAP), and housing assistance including Section 8 housing vouchers. While the Children's Health Insurance Plan (CHIP) is not included at this time, DHS is considering and has requested comments on adding CHIP.

Unlike the current policy, under the proposed rule intermittent or limited benefit use could result in a public charge determination. The current standard is whether an immigrant is likely to be "primarily dependent" upon the relevant benefits. In addition to defining public charge to mean receipt of a public benefit, the rule proposes to set a minimum threshold of public benefit use that would trigger immigration consequences. DHS proposes to count cash or cash-equivalent assistance if, in aggregate, it amounts to more than 15 percent of the federal poverty guidelines for a household of one ($1,821 in 2018). For benefits that cannot be monetized easily, the agency will look to see if the individual received or is likely to receive public benefits for more than 12 months over a 36 month period.

- **Medicaid and CHIP Should Not be Added**

CHA strongly opposes adding Medicaid or CHIP to the programs considered when making a public charge determination. Doing so could lead to millions of immigrants and their citizen

[4] 69 Fed. Reg. 28689, March 26, 1999.
[5] Id.at 28692
[6] The proposed rule excludes treatment for emergency medical conditions under Medicaid, Medicaid school-based services, Medicaid services offered pursuant to the Individuals with Disabilities Education Act (IDEA), and coverage for foreign-born children of U.S. citizen parents who would be automatically eligible to become citizens.

children who are eligible for Medicaid or CHIP dropping or failing to enroll for health care coverage. It could also have severe economic consequences for hospitals and the communities they serve.

Harmful Effects on the Health of Immigrants and Citizens

The public charge rule applies to people seeking to enter the U.S. and to immigrants in the country who want to extend or adjust their status or to become legally permanent residents (green card holders).[7] It does not apply to immigrants who are already green card holders. However, the effect of the proposal rule will extend far beyond those to whom it technically applies. The proposed rule is complicated and there is already great fear and confusion in the immigrant community about the effect upon immigration status of using public programs and services. There are abundant reports of eligible immigrants and their citizen family members already avoiding Medicaid, food stamps and other programs because of fear generated by the proposed rule, even among those not subject to it.[8] Our members tell us that they too are seeing this phenomenon among the immigrants they serve.

While DHS acknowledges the potential chilling effect in the preamble, when estimating how the rule might affect program participation it only considers the behavior of those directly affected by it and not potential disenrollment by their family members and other non-citizens. Using calculations that assume only those applying to adjust status would drop coverage,[9] DHS concludes that approximately 324,000 individuals would disenroll from or forgo enrollment in public benefit program, with approximately 142,000 avoiding Medicaid participation.[10] DHS' failure to consider the chilling effect means its impact analysis significantly has vastly underestimated the proposed rule's impact.

[7] The proposed rule would extend application of the public charge determination to those seeking to extend or adjust their status. It already applies to overseas applicants for entrance and legally present immigrants seeking green cards.

[8] See, e.g., Shapiro, N. (2018, August 12). As Trump considers penalties, Seattle-area immigrants turn down public benefits they're entitled to claim. Seattle Times. Retrieved from https://www.seattletimes.com/seattle-news/legal-immigrants-in-seattle-area-alarmed-over-possible-penalties-for-using-benefits/?utm_source=email&utm_medium=email&utm_campaign=article_left_1.1; Innes, S. (2018, Nov. 15). Arizona families are avoiding health care due to proposed public charge rule, group says. Arizona Republic. Retrieved from https://www.azcentral.com/story/news/politics/immigration/2018/11/14/public-charge-rule-affect-200-000-arizonans-donald-trump-immigration/1989952002/; Artiga, S. and Lyons, B, Family Consequences of Detention/Deportation: Effects on Finances, Health, and Well-Being, Kaiser Family Foundation Issue Brief, September 2018

[9] DHS' analysis specifically excludes those seeking an extension of stay or change of status, despite the fact that they would be subject to a public charge determination under the proposed rule.

[10] 69 Fed. Reg. 51267.

The chilling effect could actually lead to significant drops in Medicaid and CHIP enrollment by otherwise eligible immigrants.[11] According to an analysis by Manatt Health, over 13 million people, including 7.6 million children, who depend on Medicaid or CHIP for their health care could be affected. Of these, 4.4 million are noncitizen adults or children and 8.8 million are citizens, adults or children, who are family members of a noncitizen.[12] While it is difficult to predict how many of those will disenroll, one analysis predicted that almost 5 million people could drop Medicaid or CHIP, based on studies of how many people not directly affected by previous changes to immigrant benefit eligibility rules nonetheless disenrolled from the programs.[13]

Families, including their citizen children, that drop out of or avoid Medicaid or CHIP out of fear will face serious health consequences. They will be less likely to receive preventive care and services for major health conditions and chronic diseases and less likely to have a regular source of medical care than those with coverage. They will be more likely to postpone getting the treatment or prescription drugs their doctors recommend. Because of this, they are will be more likely to wait until they are very sick to go the hospital, even for routine or avoidable health conditions. Studies of states that expanded their Medicaid programs under the ACA demonstrate the positive effects of having coverage on accessing affordable care and being able to get needed services.[14]

We are particularly concerned about the negative effect this proposal could have on pregnant woman and children. Lawfully present pregnant woman who are eligible for Medicaid or CHIP may refrain from enrolling because they are afraid of the possible consequences for their immigration status. They will be forced to choose between getting the prenatal and post-natal care they need for their health and the health of their babies and being deemed a public charge. Without that care, mothers will experience more pregnancy complications and preterm births, threatening the health of their babies. A public policy that creates perverse incentives for abortion is unconscionable.

Indeed, DHS acknowledges the harm that its rule could cause noting that disenrollment from public benefits programs by those who are eligible for them could lead to worse health outcomes, especially for pregnant or breastfeeding women, infants, and children; increased use of emergency departments as a source of primary care and delayed treatment; increases in

---

[11] While CHIP is not part of the proposed rule change at this time, the enrollment in CHIP is likely to be deterred. CHIP is both a financing source for Medicaid coverage (most CHIP-funded children were covered through Medicaid in 2016) and a standalone source of coverage that families often find difficult to distinguish from Medicaid.

[12] Mann, C., Grady A., and Orris A., Medicaid Payments at Risk for Hospitals Under the Public Charge Proposed Rule, Manatt Health (Nov. 2018), available at https://www.manatt.com/getattachment/0e36d325-3a2c-4906-b49a-8cfbff5a85bf/attachment.aspx.

[13] Artiga, S., Garfield R. and Damico A., Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid, Kaiser Family Foundation Issue Brief, October 2018.

[14] See, e.g., Key Facts about the Uninsured Population, Kaiser Family Foundation Fact Sheet, November 2017.

communicable diseases, including among the general U.S. citizen population; and reduced prescription adherence.[15]

Harmful Effects on Hospitals

DHS also recognizes that the proposed rule will have harmful effects on hospitals but does not attempt to quantify that harm. "The primary sources of the consequences and indirect impacts of the proposed rule would be costs to various entities that the rule does not directly regulate, such as hospital systems, state agencies, and other organizations that provide public assistance to aliens and their households." DHS states that the rule would lead to a $1.1 billion annual decrease in federal Medicaid expenditures.[16] But because this number is based on its flawed estimate of the number of people who would forgo Medicaid it too is a significant underestimation.

Immigrants and citizens who go without health care coverage because of this rule will continue to get sick and need health care. The hospitals that treat them when they present at the emergency room with no insurance will see increases in uncompensated care. Increased uncompensated care burdens could threaten the ability of hospitals to remain viable and maintain their level of services, especially safety net hospitals serving low-income communities or areas with large numbers of immigrants.

The Manatt Health analysis of how Medicaid and CHIP funding could be affected by the proposed rule found that an estimated $68 billion in overall annual health care services for Medicaid and CHIP enrollees could be at risk due to the chilling effects of the rule, with $2 billion attributable to citizens in a family with a non-citizen. Nearly one-third of this potential effect is due to lost coverage by children, mostly of whom are themselves citizens. Hospitals could face one-year drops in Medicaid and CHIP reimbursement of up to $17 billion. The effect would vary among states, many of which have one-year Medicaid and CHIP payments of more than $1 billion.[17]

Because of the significant harm this proposed rule could cause to the health of immigrants and their citizen family members, especially pregnant women and children, and the harm it could cause to the hospitals they turn to for care and the communities those hospitals serve, CHA urges DHS to withdraw the proposed regulation.

- **Inclusion of SNAP and Housing Programs**

CHA is also very concerned about the proposed rule's effect on the ability of immigrants to access nutrition and housing programs, two very important social determinants of health. As

[15] 69 Fed. Reg. at 51270.
[16] 69 Fed. Reg. at 51268.
[17] Mann, et al.

with the Medicaid and CHIP programs, the chilling effect will reach far beyond those immigrants actually desiring to adjust status.

SNAP remains one of the most effective federal programs to help hungry and low income people struggling to make ends meet. Our nation has a moral obligation to ensure that food insecure people have enough nutritious food to eat. SNAP improves food security, dietary intake, and health, especially among children, and with lasting effects and is one of the most effective anti-poverty programs we have. Families eligible for the program will choose not to receive SNAP or not to enroll their children due to fear, both real and perceived, that seeking nutrition benefits could harm their ability to seek status adjustment or stay in the country. While SNAP is the only nutrition program proposed for inclusion in the public charge determination, we are concerned that confusion and fear will mean eligible immigrant families will also avoid the Special Supplemental Nutrition Program for Women, Infants, and Children and child nutrition programs.

The proposed rule will also increase unstable housing and homelessness among immigrant families, who will not apply for the housing assistance they qualify for because they will fear the consequences of doing so for their immigration status. Lacking access to housing has serious health consequences. Affordable, stable and quality housing has been linked to improved chronic disease management; improved child, adolescent and adult physical and mental health; reduction of infectious diseases, asthma, depression and injuries; and other positive health outcomes.[18] The health and well-being of children in immigrant families, many of whom are U.S. citizens, will be threatened.

Because of the harmful effects on the health and well-being of immigrant and citizen families and children of adding SNAP and housing programs to the public charge determination, CHA urges DHS to withdraw the proposed rule.

- **Proposed "Totality of the Circumstances" Analysis**

DHS' proposed "totality of the circumstances" application of the INA's elements to consider when making a determination of whether an immigrant is likely to become a public charge is troubling in several ways. For each element DHS lays out specific considerations and circumstances to consider and indicates whether the factor should be deemed a positive or negative factor, and whether it should be heavily weighted in making the determination. The analysis is prospective: in other words, immigration officials are assessing whether the person may at some point in the future receive one or more public benefits. **CHA has deep concerns about the proposed approach as it would create significant obstacles to lower-income immigrants, especially those from certain parts of the world, and their ability to achieve self-sufficiency.**

[18] See, e.g., Maqbool N., Viveiros J. and Ault M. 2015. Insights from Housing Policy Research: The Impacts of Affordable Housing on Health: A Research Summary. Washington, DC: Center for Housing Policy.

Under the "Assets, Resources and Financial Status" element, DHS creates a standard whereby an income of less than 125% of the federal poverty level (FPL) would be a negative factor, and income above 250% would be heavily weighted positive factor.

Among those who recently received legal permanent resident status under current law, only one-third or less of immigrants from Mexico and Central America, the Caribbean or Africa had incomes that would be a heavily weighted positive factor, compared to over 50% of those from Europe, Canada and Oceania, who were also less likely to have incomes that would be a negative factor.[19]

The income-based proposal is also misguided and counterproductive in its approach to low-income people generally. Taking a snapshot of an immigrant's income level at a specific period of time fails to consider that immigrants improve their economic status over time. As their job skills and experience increase, so does their income. In fact, acquiring a green card is an essential element of the ability to improve economic status. For example, with a green card an immigrant can start her own small business to support herself and her family and contribute to the overall economy. Immigrants are nearly 30 percent more likely than citizens to start a business.[20] Roughly one out of ten immigrant workers owns a business, with 620 of 100,000 immigrants starting a new business each month and contributing to the nation's economy.[21] Creating an income test that prevents immigrants from obtaining a green care and stopping their upward mobility makes no sense, and contradicts the American value of starting with nothing but working hard to improve your economic status and that of your family.

CHA also objects to treating receipt, or approval of receipt, of Medicaid, SNAP and housing assistance as heavily weighted factors. These are programs that support work, encourage healthy lifestyles and help families to become self-sufficient. Sixty per cent of those who get their health care through Medicaid are working, and 79 percent are in families with at least one worker.[22] Workers need to stay healthy to stay employed, but few low wage workers have access to, and can afford, employer-provided insurance. Medicaid is a crucial work support program. Similarly, lack of access to affordable housing can be a significant impediment to stable employment, while SNAP supports low-income workers and their families.[23]

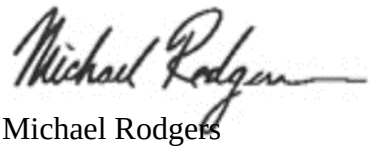
---

[19] Capps, R., Greenberg, M., Fix, M., and Zong. J. 2018. Gauging the Impact of DHS' Proposed Public-Charge Rule on U.S. Immigration. Washington, DC: Migration Policy Institute.
[20] Fairlie, Robert W. 2008. Estimating the Contribution of Immigrant Business Owners to the U.S. Economy, U.S. Small Business Administration, Office of Advocacy, Washington, D.C.
[21] Fairlie, Robert W. 2012. Immigrant Entrepreneurs and Small Business Owners, and their Access to Financial Capital, U.S. Small Business Administration, Office of Advocacy, Washington, D.C.
[22] Garfield, R., Rudowitz R., and Damico A. Understanding the Intersection of Medicaid and Work. Kaiser Family Foundation Issue Brief. Revised January 2018.
[23] Keith-Jennings, B. and Chaudhry, R. Most Working-Age SNAP Participants Work, But Often in Unstable Jobs. The Center on Budget and Policy Priorities. March 15, 2018.

DHS' self-stated goal is that immigrants be self-sufficient. Yet its proposed approach to implementing the "Assets, Resources and Financial Status" element undermines that goal, both for immigrants seeking to come to the U.S. or to become green card holders and for those who are already legally permanent residents. Because of the chilling effect, many low-income immigrants who are not subject to the public charge test will nonetheless avoid the very assistance they need to maintain their employment. With that assistance, they can enjoy continued and better employment such that they no longer need public benefit programs. Without that assistance, they could lose their jobs and their ability to support their families and contribute to the community.

In closing, thank you for the opportunity to share these comments on the proposed Inadmissibility on Public Charge Grounds rule. **Because of the concerns detailed above, especially the rule's potential impact on immigrant families and children, we again urge you not to finalize this rule but instead to withdraw it.** If you have any questions about these comments or need more information, please do not hesitate to contact me or Kathy Curran, Senior Director Public Policy, at 202-721-6300.

Sincerely,



Michael Rodgers
Senior Vice President
Public Policy and Advocacy