



A Passionate Voice for Compassionate Care

April 25, 2022

Ms. Samantha Deshommès
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-2021-0013

Re: Public Charge Ground of Inadmissibility: Notice of Proposed Rulemaking

Dear Ms. Deshommès:

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 February 24, 2022 (87 Fed. Reg. 10570). The proposed rule in large part codifies the public charge analysis set forth in the 1999 Interim Field guidance and currently applicable following the vacatur of the 2019 public charge rule.¹ **CHA welcomes and supports the proposed codification and urges you 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. 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. The Catechism of the Catholic Church teaches that "The more prosperous

¹ See *Inadmissibility on Public Charge Grounds; Implementation of Vacatur*, 86 FR 14221, 14221 (Mar. 15, 2021).

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.”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.

For these reasons, we had raised serious objections when the 2019 public charge rule was proposed and urged its rejection, believing it would result in harm both to immigrants and citizens; would impose added burdens on our nation’s health care system; and would unduly prejudice low-income immigrants hampering their ability to escape poverty and contribute to the common good of our society. We believe the current proposal removes those concerns and will help to alleviate the significant chilling effect of the 2019 rule, which kept low-income immigrants including those not subject to the public charge requirement, from receiving government-funded assistance to which they were entitled.

- **Definitions**

The Immigration and Nationality Act (INA) provides that applicants for admission to the U.S. or adjustment in status must be assessed to determine whether they are “likely at any time to become a public charge.”³ A finding that the applicant is likely to become a public charge renders the person inadmissible.

We agree with the proposed definition of “likely at any time to become a public charge,” namely, whether an immigrant is likely to become *primarily* dependent on the government for *subsistence*. The term “primary” distinguishes between those whose main source of income is government assistance and those who receive assistance temporarily to supplement their income or for special use. The focus on subsistence rightly limits the inquiry to the applicant’s use of public cash assistance or long-term institutionalization at government expense. We objected strongly to the 2019 rule’s inclusion of receipt of Medicaid, CHIP, nutrition and housing benefits in the public charge analysis and are pleased the current proposal limits the inquiry to cash assistance and long-term institutionalization.

We agree with and welcome the position taken in the preamble that special-purpose and earned-benefit cash assistance programs would not be considered in public charge determinations. Immigrants should not be barred from or discouraged from accepting cash assistance provided in

² Catechism of the Catholic Church [2241].

³ Immigration and Nationality Act (INA) § 212(a)(4), 8 U.S.C. §1182(a)(4).

times of disaster or public health emergency such as the recent pandemic. We believe it would be best for DHS to emphasize these exclusions by codifying them.

We also agree with the proposed change in language from the 1999 Interim Field Guidance with respect to long-term institutionalization. Using the phrase “long-term institutionalization at government expense” instead of the older formulation, “institutionalization for long-term care at government expense,” together with the discussion in the preamble makes it clearer that short-term residential care for rehabilitation or mental health treatment is not included. We also appreciate the statement in the preamble that long-term institutionalization is the only category of Medicaid-funded services that would be considered in public charge admissibility determinations. Similarly, the preamble contains the important clarification that Medicaid-funded home and community-based services are not to be considered. HCBS services are essential to allow older adults and people with disabilities to remain in the community and maintain employment.

- **Public Charge Admissibility Determination**

The INA provides that immigration officials are to consider several factors in making a public charge determination: the applicant’s age, health, family status, financial status (including assets and resources) and education and skills. We support the codification of the totality of the circumstances as applied under the 1999 Field Guidance, under which all of the statutory factors are considered and no one factor is determinative. The standard finalized in the 2019 rule with its detailed standards, weighting scheme and evidentiary requirements was burdensome, overly prescriptive and contributed to the chilling effect that kept immigrants from receiving assistance for which they were eligible.

We agree that an individual’s current and/or past receipt of public cash assistance for income maintenance or long-term government institutionalization should not determine whether the individual is likely at any time to become a public charge and should only be considered in the context of the totality of the circumstances. We also appreciate that the proposed rule expressly provides that, while the statute requires health to be considered, the fact that an applicant has a disability will not alone justify a public charge determination.

Finally, we welcome the proposal to require a written justification for a finding of public charge inadmissibility, which explains the reasoning for the denial of admission including a discussion of all of the statutory factors. This will greatly enhance the transparency and consistency of the process.

- **Chilling Effect**

We very much appreciate DHS’ detailed attention to the possible chilling effects of its action with respect to public charge determinations. Our opposition to the 2019 rule was rooted in deep concern about its impact on immigrant families and children. We were very much concerned that

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the inclusion of a broad range of cash and non-cash public benefit programs and the prescriptive totality of the circumstances test would lead to millions of immigrants and their citizen children who were eligible for Medicaid or CHIP dropping or failing to enroll for health care coverage. While 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, and not immigrants who are already green card holders, we feared the effect of the 2019 rule would extend far beyond those to whom it technically applies. Analyses predicting the impact of that rule when it was proposed as well as studies done after its finalization bore out our concerns, showing a significant disenrollment effect on immigrants and their citizen family members.⁴

We agree the proposed rule mitigates the likelihood of widespread disenrollment of immigrants and their family members from public benefit programs for which they are eligible, especially those not subject to the public charge rule. However, given the continued possibility of some chilling effect under the proposed rule and the ongoing chilling effect of the 2019 rule, we urge DHS to undertake a widespread communications effort in partnership with non-profit and community organizations and state and local governments. A public awareness campaign when the proposed rule is finalized would address misconceptions and fear in immigrant communities that receiving health care, housing, nutrition and other forms of public benefits could trigger immigration enforcement actions.

In closing, thank you for the opportunity to share these comments on the proposed Inadmissibility on Public Charge Grounds rule. 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,



Lisa A. Smith
Vice President
Public Policy and Advocacy

⁴ See 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-8cfbf5a85bf/attachment.aspx>; 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); Bernstein, H., Gonzalez D., Karpman M., and Zuckerman S, Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019 (Urban Institute 2020); Randy Capps et al., Migration Policy Institute, Anticipated “Chilling Effects” of the Public-Charge Rule Are Real: Data Reflect Steep Decline in Benefits Use by Immigrant Families (Dec. 2020), <https://www.migrationpolicy.org/news/anticipated-chilling-effects-public-charge-rule-arereal>.