



CWDA
Advancing Human Services
for the Welfare of *All* Californians

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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, 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 Chief Deshommes:

On behalf of the County Welfare Directors Association of California (CWDA), we are writing to submit comments in opposition to the Department of Homeland Security's proposed public charge rule.

CWDA is a nonprofit organization that represents California's 58 county human services departments. As the primary administrators of human services programs in California, our member agencies serve individuals and families with various immigration histories. The services provided by county agencies to all individuals, including immigrant communities, are essential for the well-being, health, and success of California's economy and core values. Our state celebrates diversity and supports all residents in achieving their dreams. As such, our county agencies see first-hand the impacts of federal law and regulation changes, such as those proposed within the published notice. If this rule is published without any changes, our counties would bear much of the human and financial cost of the harms caused by this rule, including significant negative economic and public health impacts on our residents. Our thousands of county-based staff across the state, who administer the programs that would be added to the rule, also would experience a significant workload burden.

Generally, the proposed rule would broaden the list of benefits considered as "negative factors" in a public charge assessment to include, for the first time, consideration of Medicaid, the Supplemental Nutrition Assistance Program (SNAP), Section 8 Housing Vouchers, public housing and Medicare Part D financial assistance. The rule also would add a complex set of factors to the existing public charge test that determines whether an individual is likely to become a public charge, including new requirements related to the consideration of characteristics such as a

specified threshold income level, insurance status and English proficiency, along with the receipt of public benefits.

We are concerned about the potentially massive chilling effect of this proposed rule. Based on past experience, many immigrant families will be harmed by this proposed rule, whether the rule applies to them directly or not. We have already seen families that include U.S. citizens depriving themselves of nutrition benefits under SNAP, support for housing costs, and Medicaid services out of fear. The ripple effect of these rules would extend far beyond the subgroup of individuals who might actually be subject to the public charge test; these changes will discourage many immigrant families from accessing benefits for which they are eligible.¹ This may additionally impact U.S. citizen family members who would not be affected by the rule directly, but who choose to go without coverage due to the heightened fear in our communities about the rule.

Having eligible recipients seek to disenroll themselves from these programs would especially impact California, where one in three residents are enrolled in the state's Medicaid program and nearly 4 million receive SNAP benefits. This chilling effect, resulting in reduced health care coverage and increased hunger, will place our state's overall well-being in danger as well, due to foregone health care and nutrition benefits creating sicker, poorer communities. The proposed rule itself states, "There are a number of consequences that could occur ... Worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence ... and increased rates of poverty."

We already have heard disturbing reports from across the state regarding program beneficiaries calling county offices and asking for their cases to be discontinued, which is also impacting U.S. citizens. These families have reportedly requested to end their Medicaid and SNAP cases, even where the only family members receiving services are U.S. born citizen children. Unfortunately, due to the chilling effect of this draft policy, we are already seeing U.S. citizen California residents who are not even subject to public charge, forgo essential benefits and services providing health care and nutrition to children.

Financial Impact

The chilling effect of rule changes such as those proposed in the draft rule is well documented. In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act codified the factors that had been used in public charge determinations for many years. It also established a new affidavit of support that could be used to overcome a public charge barrier. But, as immigration officials clarified in the following years, the law did not alter the public charge test itself. Another law, PRWORA, restricted eligibility for public benefits, but also did not alter the public charge test. The enactment of the two laws, and some overreaching by federal and state agencies, generated confusion and panic within the immigrant community and discouraged many from seeking critical health and nutrition benefits for fear of deportation. The Migration Policy Institute found that

¹ Emily Bazar, Some Immigrants, Fearful of Political Climate, Shy Away from Medi-Cal (Kaiser Health News, February 22, 2017) <https://khn.org/news/some-immigrants-fearful-of-political-climate-shy-away-from-medi-cal/>

during this time period there was a sharp decline of immigrants' use of public benefit programs like Medicaid & CHIP.²

Applying this experience to today's proposal, it is clear that reductions in the use of health coverage and nutrition benefits will negatively impact state and local economies. As just one example, the U.S. Department of Agriculture estimates that every \$1 in SNAP benefits generates \$1.79 in economic activity.³ For the state of California, even a 1 percent drop in SNAP enrollment as a result of these rules would equate to a loss of more than \$100 million per year in economic activity. California foresees an unprecedented economic ripple effect as a result of this policy, if implemented, which includes up to 17,700 lost jobs, a decrease of up to \$2.8 billion in economic output, and up to \$151 million in lost tax revenue.

Based on these figures, the fiscal effect of the proposed policy changes would equal billions of dollars lost from our state economy just in SNAP alone, and even more across the nation. This doesn't include other costs such as foregone federal and state taxes from adults who are unable to work due to hunger, sickness and homelessness due to foregone benefits.

In addition, there will be impacts to county staff workloads and their ability to effectively and efficiently process eligibility for the affected programs. Issues our county agencies will face include:

- Increased caseload "churn." While we anticipate many recipients will disenroll from programs affected by the proposed rule changes, we anticipate re-enrollment to happen over time as issues arise for these individuals and their family members. This could be due to emergent health needs, a more in-depth understanding of the public charge rule, or for other reasons. This increase in "churn" in the programs our counties administer would create a new, highly duplicative, workload for county eligibility staff and a direct cost increase to the federal, state, and local governments that jointly fund this work.

Further, the health effects – and, thus, the cost effects – of breaks in health care have been well documented. When individuals re-enroll in health care when their health deteriorates, their care will be costlier than if they had continuous coverage without a break, and therefore had been able to access preventive care and be diagnosed and treated earlier for a range of conditions.

² Batalova, Jeanne, Michael Fix, and Mark Greenberg. 2018. Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use. Washington, DC: Migration Policy Institute.

*Migration Policy Institute (MPI) estimates based on analysis of American Community Survey pooled data, 2014-16. *The term "Non-citizen" as used by MPI includes people who are refugees and asylees, visa-holders, green-card holders, undocumented.

³ Economic multipliers are estimated by the USDA's Food and Nutrition Service. See: Hanson, Kenneth. 2010. The Food Assistance National Input-output Multiplier (FANIOM) Model and Stimulus Effects of SNAP, U.S. Dept. of Agriculture, Economic Research Service.

- Responding to consumer inquiries related to the new rule. Our county agencies will undoubtedly experience increased call volume and traffic from consumers concerned about the new policies, requiring ongoing development of messaging for staff to use and training on that messaging, as well as reviewing outcomes over time. It will be difficult to properly advise our customers about changes to the public charge determination and how their receipt of various benefits might affect them at some future date. It will be critical to ensure our staff have nuanced messaging at their fingertips and are trained on how to engage clients about the rule.
- Responding to requests for proof of benefits receipt. The draft form I-944 (see: <https://www.regulations.gov/document?D=USCIS-2010-0012-0047>), would require states and counties to develop new processes in response to the rule. Applicants for a change in immigration status would be required to provide supporting documentation not only about whether they received a public benefit, but the type, amount, agency that granted it, date it was granted and expired and who in the household received it. Recipients will also need to document any Medicaid received (even if it does not count against them due to the exclusions in the proposed rule).

Being able to provide this information in a comprehensive and timely manner will require system updates, new work processes and likely hiring and specially training of additional personnel for counties to respond to such requests. Counties will need to work with the state to develop standardized processes for receiving requests and providing such information across the state that safeguards personal data. This is not only a significant workload but also would include potentially major automation costs, given the level of detail required by the draft I-944 form – which requests information about the amount of benefits paid even for services that are typically transparent to a recipient, such as funds paid for health care provided through Medicaid, information that is not held in the California system of record for Medicaid eligibility but in a separate medical information system.

- Modifying existing communications and forms related to public charge. For almost 20 years, agencies have worked under consistent and clear rules about when a consumer's use of benefits could result in a negative finding in their public charge determination. Agencies have incorporated these messages on a variety of consumer communications including application instructions, websites, posters used in lobbies, and in scripts and trainings for staff. All of these consumer communications will have to be identified and removed or changed. In addition, many states have deliberately created seamless application and client experiences for state/local and federal benefit programs, as well as for Medicaid/CHIP benefits. These would need to be delinked and clients provided with clear information about whether the program they are participating in is subject to the public charge determination. Further, the highly complex nature of the proposed rules will make clear communication more difficult to develop.

Health Impacts on Families and Children

From 2013 to 2017, the uninsured rate in California dropped from 17 percent to under 7 percent. These coverage gains have allowed California's families to access regular health care and lead healthier lives. Healthy families are better able to integrate into their new communities contribute to the U.S. economy, and it is vital that health center patients and their families continue to access medical care and other social services without fear of adverse immigration consequences.

CWDA urges that CHIP continue to be excluded from the list of services when determining public charge. Publicly-funded programs, like Medicaid and the Children's Health Insurance Program (CHIP), help families meet their children's basic needs and provide a buffer against the negative effects of adversity. Counties administer eligibility for these programs in California, as CHIP is embedded in our Medicaid program. 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 public charge determination as well as the chilling effect detailed above.

In addition to the great harm that would be caused by the inclusion of CHIP, this 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. Moreover, including CHIP, a benefit explicitly created for working families, in the public charge assessment would be contrary to the historical meaning of a public charge as a person who depends on the government rather than working.

Reducing access to these programs – either directly through the rule's changes or indirectly through the chilling effect the rule would have – would be harmful to children's development and have implications for their well-being into adulthood. For example, children enrolled in Medicaid in their early years not only do better in childhood than children without health insurance, but also have better health, educational, and employment outcomes in adulthood.⁴ Additionally, uninsured children are less likely to receive preventive care and necessary treatment when they are sick or injured, and are generally less healthy compared to children with

⁴ Rourke O'Brien and Cassandra Robertson, *Medicaid and Intergenerational Economic Mobility*, University of Wisconsin—Madison, Institute for Research on Poverty, 2015, <https://search.library.wisc.edu/catalog/9910223409002121>; Andrew Goodman-Bacon, *The Long-Run Effects of Childhood Insurance Coverage: Medicaid Implementation, Adult Health, and Labor Market Outcomes*, NBER Working Paper No. 22899, 2016, www.nber.org/papers/w22899.

health insurance.⁵ Thus, treating health programs as a negative factor in the public charge assessment would have the paradoxical effect of making children less able to contribute as adult workers. If this proposed rule were to be implemented, we will see negative health ramifications in our immigrant children and families since they would be discouraged of enrolling into publicly funded insurance programs, like Medicaid and CHIP.

For all of these reasons, we strongly oppose adding any additional programs to the totality of circumstances test.

Conclusion: Urge withdrawal of proposed rule

For the reasons stated herein, the County Welfare Directors Association asks that you withdraw this proposal and urges you to instead advance policies that strengthen—rather than undermine—the ability of our residents and their surrounding communities to thrive.

If you have any questions, please feel free to contact Tom Joseph, Director of CWDA's Washington Office at tj@paragonlobbying.com or (202) 898-1446 or Cathy Senderling-McDonald, Deputy Executive Director of CWDA at csend@cwda.org or (916) 443-1749.

Sincerely,



Cathy Senderling-McDonald
Deputy Executive Director
County Welfare Directors Association of California

⁵ Amanda R. Kreider, Benjamin French, Jaya Aysola, et al., "Quality of Health Insurance Coverage and Access to Care for Children in Low-Income Families," *JAMA Pediatrics* 170 (2016).