



December 4, 2018

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

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

Dear Ms. Deshommnes:

On behalf of the California State Association of Counties (CSAC), representing California's 58 counties, I am writing to express significant concerns over the proposed rule on public charge. Our members are the critical link between the policies and programs of the federal and state governments and the residents those programs serve and protect. Due to our unique role, we are keenly aware of the potential effect of the proposed rule on the residents in our state and on the county agencies serving them.

The proposed rule would expand the definition of public charge and add new negative factors that could be considered when a federal official determines whether to approve a legal immigrant's application to extend or adjust their current immigration status. Under the proposal, if an immigrant here legally in the U.S. applies for or receives certain federal non-cash benefits he or she is legally eligible to receive, the ability to extend or change his/her immigration status may be jeopardized. Given all of the potential consequences, we urge the Department to withdraw its proposal.

Background

Current regulations require immigration officials to consider the receipt of cash assistance, including Temporary Assistance for Needy Families (TANF or CalWORKs in California), Supplemental Security Income (SSI), and General Assistance, in determining whether an applicant is likely to become dependent primarily on government support. The current rules have been in place for decades.

In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act codified the public charge factors in place for many years. It also established a new affidavit of support that could be used to assuage any concern over the potential receipt of cash benefits. The welfare reform law which created the Temporary Assistance for Needy Families program in 1996 also restricted eligibility for TANF, Medicaid and Supplemental Nutrition Assistance Program (SNAP or CalFresh in California) during an immigrant's first five years in the United States. Notably, it did not alter the public charge test on receiving a cash benefit. In 1999, the federal government clarified its guidance to confirm that the public charge test was based on the receipt of cash assistance such as TANF, SSI or payments for long term institutional care that demonstrated that the immigrant was "primarily dependent on the government for subsistence."

The Proposed Rule

The proposed rule would require consideration of the current or potential receipt of non-cash benefits, including Medicaid/Medi-Cal, SNAP/CalFresh, federally subsidized housing, and Medicare Part D financial assistance. Additionally, the rule would add a complex set of

income and demographic factors in determining public charge, including consideration of income, age, English proficiency, and disability. CSAC is concerned that legal immigrant families will not access federal benefits for which they are eligible, especially for non-immigrant/citizen children who may be eligible for health and nutritional supports. The negative consequences from this proposed rule could include disenrollment from health and social services, worse health and wellbeing outcomes, increased county costs, and increased county administrative burdens.

Health and Wellbeing Outcomes: Given the expansive nature of the proposals, CSAC has concerns about the chilling effect of the rule, whether the rule applies to a particular immigrant or not. The proposal's issuance is already causing some individuals otherwise eligible for non-cash support to forgo or withdraw from health and human services programs which help ensure the wellbeing of all residents in California, including immigrants. This chilling effect would decrease federal health care coverage and increase food insecurity, reducing the well-being of our residents and potentially placing everyone at risk of a communicable disease outbreak or other preventable health emergency in our State.

The proposed rule itself agrees with our concerns. It cautions, "*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.*" Another section states the rule "*has the potential to erode family stability and decrease disposable income of families and children because the action provides a strong disincentive for the receipt or use of public benefits by aliens, as well as their household members, including U.S. children.*"

In its June 2018 report, the Migration Policy Institute notes that there were a number of studies done after the 1996 welfare reform law, during a time when there was confusion about the rules, which documented a large percentage of otherwise eligible legal immigrants choosing to withdraw from federal benefit programs. The U.S. Department of Agriculture found that food stamp use fell by 53 percent between 1994 and 1998 among U.S. citizen-children who had a noncitizen parent. Similar decreases in participation were found in Medicaid, including a drop of 17 percent among noncitizens and 39 percent among refugees and an even greater reduction in participation in the TANF program of 44 percent and 78 percent, respectively.

The Children's Partnership of California issued a report in October 2018 which estimates a range of potential disenrollment rates among children in immigrant families in California. Using the Kaiser Family Foundation model to project the public charge impact in California, the Partnership estimates that between 15 percent and 35 percent or 269,000 to 628,000 otherwise eligible children would lose Medicaid, CHIP and other public health insurance. Similarly, SNAP/CalFresh disenrollment rates of between 15 percent and 35 percent among children in immigrant families would lead to the loss of 113,000 to 311,000 children who would no longer participate, despite remaining eligible.

Additionally, a 2018 survey of immigrant families in California conducted by the Partnership found a 67 percent increase in immigrant concerns reported by health providers about enrollment in Medi-Cal, CalFresh, Women, Infants, and Children (WIC) and other public programs, with 40 percent expressing interest in withdrawing from those programs. There was also a 42 percent increase in skipped health care appointments.

The rule will also affect our state's economy given the projected reductions in the use of health coverage and nutrition benefits. The U.S. Department of Agriculture estimates that

every \$1 in SNAP benefits generates \$1.79 in economic activity. Even a one percentage point 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. The UCLA Center for Health Policy Research has estimated the economic effects on the state due to the chilling effect. Their analysis estimates that the projected \$718 million to \$1.67 billion in reduced federal benefits would result in the loss of 7,600 to 17,700 jobs, \$1.2 to \$2.8 billion in reduced economic output, and \$65 to \$151 million in decreased state and local tax revenue.

With respect to health care, our state has made great strides in ensuring that individuals and families have health insurance. From 2013 to 2017, the uninsured rate in California dropped from 17 percent to under 7 percent. Healthy families are better able to assimilate and contribute to the U.S. economy. It is vital that our residents not fear that receiving health care may jeopardize their ability to reside and participate in our communities, including those who access our county clinics, public hospitals and community health centers. There could also be increased reluctance to receive immunizations from or interact with the local health departments.

CSAC notes that the proposed rule does not include participation in the federally funded Children's Health Insurance Program (CHIP) as a factor in determining public charge. We support its continued exclusion from the list. In 2009, Congress gave states the option to cover immigrant children and pregnant women with Medicaid and CHIP benefits during their first five years in the United States. California adopted that option, recognizing the importance of ensuring a healthy start in life. California's counties administer eligibility for CHIP as it is embedded in our Medicaid program. CHIP is essential to working families whose incomes exceed the Medicaid income guidelines. If participating in CHIP became a negative factor in the public charge assessment, it 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.

Taken together, all of these potential reductions in health care coverage, nutrition assistance, and other benefits would have detrimental impacts in California. Many low-income families may not receive the preventative services, treatment, nutrition education and assistance, and support needed to ensure lifelong health benefits afforded through these programs for which they are lawfully eligible. The reduced use of the public health system would also create an increased risk in the broader community of infectious disease incidences and outbreaks, such as influenza and measles.

County Cost Shifts: Not only will the proposed rule affect immigrants and California's economy, if legal immigrants decide to withdraw or not apply for non-cash benefits for which they are eligible, the responsibility and costs of services may fall solely on county governments and non-profit entities. Our state would be particularly affected by the rule, with potential shifts in costs to counties for those otherwise-eligible residents choosing to forgo assistance. One in three Californians are enrolled in the state's Medicaid/Medi-Cal program and nearly 4 million receive SNAP/CalFresh benefits. Increases in uncompensated health care costs for hospitals and clinics, demand for local nutrition supports and housing instability are among the potential impacts, some of which are already being reported by health and human services professionals due to the proposal's chilling effect generating confusion and fear within immigrant communities.

Medicaid is the single largest source of funding for county hospitals and clinics. In California, one of every two children lives with an immigrant parent and more than half of all children are enrolled in Medi-Cal. Forgoing Medi-Cal coverage will result in a greater number of uninsured and increased uncompensated care costs to be borne by counties.

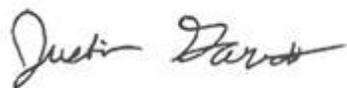
Administrative Burdens: The proposed rule will add new layers of administrative complexity for our county staff. Those new burdens and mandates would include:

- *Documenting Self-Sufficiency:* The proposed rule would require legal immigrants wishing to extend or revise their current legal status to complete Form I-944 – Declaration of Self-Sufficiency to provide in the form of “a letter, notice, certification, or other agency documents” from our counties evidence demonstrating if they have ever applied for or received benefits, including the exact amount of the benefit and dates of benefits received. Such a mandate will generate a huge workload for county agencies, potentially requiring system updates and increased automation costs, and in many cases may require access to information that has been archived from no longer functional eligibility systems that have been replaced.
- *Multiple Application Processes and Undermining Eligibility:* Given the streamlining role of presumptive eligibility which allows counties to determine eligibility for other federal programs if the applicant qualifies for one of them (e.g., Medi-Cal, CalFresh, CalWORKs), enrollment in programs such as the WIC program - which are not on the public charge list - will likely be undermined given the chilling effect, and/or will require counties to increase administrative efforts to increase and conduct separate enrollment procedures. A National WIC Association survey estimated significant increases in administrative expenditures on the certification process if this streamlined eligibility process was undermined. Congress has expressly permitted the Special Supplemental Nutrition Program for Women, Infants and Children program to presume any individual on Medicaid, SNAP, or TANF to be income-eligible for WIC, thus reducing the paperwork burden during WIC certification. In 2016, 74.9% of WIC participants were eligible for WIC due to eligibility for another program.
- *Increased “Churn” Among the Eligible Caseload:* As legal immigrants learn about the new rule, more families will terminate their participation in programs, as already experienced in some communities. However, if their health care needs become more acute due to lack of insurance coverage, they may re-apply. This on-again-off-again approach to enrolling in benefits not only jeopardizes an individual’s health, it also unnecessarily duplicates the work and increases costs for county agencies.

For all of these reasons, CSAC opposes adding these additional programs or procedures to the totality of circumstances in determining the factors constituting public charge and urges that the Department withdraw the proposed rule.

If you have any questions, please contact Justin Garrett with CSAC at jgarrett@counties.org or 916-650-8117 or Tom Joseph, Washington Representative for CSAC, at tj@paragonlobbying.com or 202-898-1446.

Sincerely,



Justin Garrett
Legislative Representative
California State Association of Counties