



NJ For Health Care Coalition
December 10, 2018

**COMMENTS to the Department of Homeland Security, United States Citizen and
Immigration Services, CIS No. 2499-10**

**RE: DHS Docket No. USCIS-2010-0012, RIN 1615-AA22
Response to Proposed Changes to Inadmissibility on Public Charge Grounds Regulations**

On behalf of the NJ For Health Care Coalition, New Jersey Appleseed Public Interest Law Center respectfully submits the following comments to the Department of Homeland Security (“DHS”), United States Citizen and Immigration Service (“USCIS”), in response to the proposed rules amending the standards and guidelines governing the inadmissibility of persons seeking immigration and non-immigration visas to enter this country, as well as those immigrants seeking to secure permanent status or change in their temporary status. The proposed rule changes were published in the Federal Register on October 10, 2018.

The NJ For Health Care Coalition is a broad-based alliance of health care, consumer, senior, student, disability, women's, labor, faith-based, civil rights and social justice organizations working to bring guaranteed, high quality, affordable health care to all New Jersey residents. Our more than 70 partner organizations include AARP-NJ, New Jersey Policy Perspective, New Jersey Citizen Action, Anti-Poverty Network, Statewide Parent Advocacy Network, Alliance for Immigrant Justice and Latino Action Network. (A list of all participating organizations can be found at <http://njforhealthcare.org/index.html>.) We have been working over the past several years to build strong alliances with patients, providers, small and large businesses and health care and social service agencies across the state in order to ensure that the Affordable Care Act (ACA), including its expansion of Medicaid, is effectively implemented in New Jersey in accordance with our core principles: affordability, transparency, and accountability to all consumers, including immigrants and their families. In the past, we were instrumental in assisting our Legislature to develop a blueprint for a state insurance exchange, which unfortunately was vetoed by our Governor. And throughout our history, we have been committed to making sure that all children residing in the state have health insurance and, along with their parents, access to health care, nutrition and housing assistance, all of which are essential to keeping families together and enabling them to be productive members of our local communities.

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Immigrants Are a Vital Segment of New Jersey Residents

New Jersey has a relatively robust Medicaid program and a strong social service network, as well as a history of welcoming immigrants. More than one in five New Jersey residents is an immigrant, while nearly one in six is a native-born U.S. citizen with at least one immigrant parent. More than half of all immigrants in New Jersey are naturalized U.S. citizens and most have pursued education at or above the college level. As of 2016, 49 percent of immigrants in New Jersey who were eligible for DACA (Deferred Action for Childhood Arrivals) had applied for DACA status, and in 2015, 1.3 million immigrant workers comprised 27.8 percent of New Jersey's labor force.¹ The Coalition and New Jersey public policy see our immigrant communities as a vital source of cultural and social diversity, and integral to the State's economy. The State's provision of health insurance, through its contribution to Medicaid and CHIP, and nutritional assistance, through SNAP and other programs, are seen as a social investment in, and commitment to, all its residents; and any attempt to limit immigrants and their families' access to such public benefits has the potential to slow the pace of their integration, hinder their ability to earn higher wages, and harm their individual health and the health of the communities in which they reside. As a result, **we view the proposed rule as antithetical to our core values and inconsistent with the way "public charge" has been historically understood and implemented under U.S. immigration policy.**

The Proposed Rule

As a general matter, we have significant concerns about the proposed rule's radical restructuring of immigration policy wrought by the introduction of new income thresholds for households seeking to immigrate to this country, or who, residing in the country, seek to change the immigration status of one of its members through a family-based petition. Now, for the first time, individuals and families with limited financial resources (i.e., earning less than 125% of Federal Poverty Level) but with the potential to be productive and to participate in the social and economic life of our communities, may be effectively barred from entering the U.S. or securing legally permanent residence if already here. In addition to low-income, the proposed rules give negative weight to children, seniors, persons with limited English proficiency, poor credit history, limited education, large families, or receipt of an expanded list of public benefits during the 36 months prior to applying for admission or permanent status (i.e., a green card).

Despite the proposed rule's explicit limitations (i.e., DHS will not consider benefits received by an applicant's dependents or other household members; DHS will not consider programs funded entirely by states, localities or tribes; the rule does not reach refugees, asylees, survivors of domestic violence and other protected groups; the rule is not retroactive; the rule does not apply to legally permanent residents who apply for citizenship; nor does it interpret or expand the public charge ground governing deportability), we believe that the proposed changes will not only alter the nature of immigration to the U.S. (i.e., severely restrict family-based petitions and the access of low-income folk generally), but also will chill access to critical

¹ All data in paragraph found in American Immigration Council, *Immigrants in New Jersey*, 2017 at <https://www.americanimmigrationcouncil.org/research/immigrants-in-new-jersey>.

services for those already here, with devastating impact on the families, including children, who are currently eligible for and receiving such public benefits. This is especially the case for everyone who lives in a family with at least one non-citizen immigrant and where someone in the family has received or is receiving Medicaid, SNAP or even a public benefit not listed in the rule such as CHIP. In fact, there is some evidence that immigrant families within the country have already been dropping out of programs in response to press accounts about proposed changes to the public charge rule.² Individual, family and community health are inextricably linked, and therefore all persons residing in the United States should be permitted to enjoy the public benefits offered in a given state for which they qualify, regardless of whether or not they are citizens. **Because of the rule's narrow vision of who is "a desirable immigrant" and its potential chilling effect, the members of the NJ For Health Care Coalition urge that the proposed rule be withdrawn in its entirety and that longstanding principles clarified in the USCIS field guidance issued in 1999 remain in effect.**

Specifically, the direct impact of the proposed rule falls upon those who are seeking admission and permission to stay in the United States. That is, the full effect of the proposed rule's significant changes on immigration policy will be felt by (1) individuals seeking admission to the United States from abroad on immigrant (permanent) or nonimmigrant (temporary) visas; (2) individuals seeking to adjust their status to become legally permanent residents from within the United States; and (3) individuals within the United States who hold a temporary visa and are seeking to either extend their stay or change the nature of their status (e.g., H-1B workers or foreign students). It should be noted that in FY2017, more than 80 percent of newly arrived immigrants came to unify with their families in the United States, and among those seeking adjustment of their status, 48% were family-based immigrants.³ In other words, the proposed rule, with or without the expansion of public benefits included in the public charge determination, is an attack on or challenge to family-based immigration; the NJ for Health Care Coalition adamantly opposes such attack. The health of parents, spouses and children are intertwined, and all efforts should be directed at keeping families together and reuniting them when apart.

All persons falling within the three categories will be subject to the public charge income/age/credit history/English language proficiency/education test, but in most cases not the public benefit analysis. Typically, such individuals are subject to public charge determinations but do not qualify for public benefits. Nonetheless, there are a select group of individuals who will be subject to both and thus could be penalized for using benefits for which they are eligible. A review of such individuals and the nature of the public benefits reveal the cruelty of expanding the public benefits included in the public charge test and prove the radical reconceptualization of the term "public charge." The subgroup of individuals includes: lawful permanent residents who qualify for all listed public benefits but who leave the country for more than six months and attempt to re-enter; lawfully residing children and/or pregnant women who qualify for Medicaid in 30 states, including New Jersey, and either seek a green card or attempt

² Protecting Immigrant Families, "Proposed Changes to Public Charge: Quick Analysis and Frequently Asked Questions (October 2018) at 4.

³ Jeanne Batalova, Michael Fix and Mark Greenberg, "Chilling effects: The Expected Public Charge Rule and its Impact on Legal Immigrant Families' Public Benefits Use," (MPI, June 2018) at 13.

to extend or change their temporary non-immigration status; lawfully present immigrants with a lengthy work history who are eligible for Medicare Part D prescription drug subsidies and seek a change in status; and a subset of Cuban/Haitian entrants who are eligible for Medicaid, SNAP and housing subsidies; and citizens of certain Pacific Islands who are eligible for housing subsidies and who, upon leaving the U.S. and attempting to reenter or seeking a green card through a family-based visa petition, are subject to the public benefits test. In all these situations, subsidies are provided to permit people in particular situations to properly care for themselves and their families. There is no evidence that such immigrants are not working, fully participating in their communities, or “depending” on the federal government as their only means of support. Expanding the list of public benefits to include Medicaid, SNAP and housing subsidies, programs in which the government merely compensates for deficiencies in the private labor market, where workers often do not receive a living wage, unnecessarily distorts the historical use of the term “public charge” and should not be adopted by this administration.

The Chilling Effects: Confusion and Fear

In addition to the proposed rule’s effects on legal immigration to the United States, there is reason to expect that the rule will have a significant impact on participation in public programs, such as Medicaid and SNAP, by legally present immigrants and their children, despite the fact that they qualify for such benefits. Fear that participation in such programs will trigger dire immigration consequences, including deportation, could lead immigrants, whether or not they are citizens, to drop out or not enroll themselves, their children or elderly parents in programs for which they are eligible. This in turn could have a negative impact on the well-being of these immigrant families, slow their social and economic integration, put unnecessary financial burdens on local health systems and raise public health risks generally. There is little doubt that immigrants’ withdrawal from subsidized health insurance programs could lead to higher levels of unsubsidized care and higher unreimbursed costs, while at the same time making immigrants and their children reluctant to visit doctors and clinics, thus creating increased public health risks for themselves as well as the broader community.

In fact, an analysis undertaken by New Jersey Policy Perspective (“NJPP”), a member of the NJ For Health Care Coalition, estimates that the chilling effect of the proposed rule may reach about 700,000 New Jerseyans: approximately 250,000 children under 18, 210,000 of whom (84%) are citizens would be impacted as well as 440,000 adults, 130,000 of whom are citizens. The 700,000 number includes anyone in a family that has received any food, health or housing supports, and where at least one member of the family is a non-citizen who may in the future seek naturalization or a change in immigration status.⁴ In addition, NJPP estimates that potential disenrollment in SNAP and Medicaid by immigrants who qualify for those programs will also result in a loss of federal funds with predictable ripple effects on both local businesses and workers (in the health and retail food industries). The organization estimates, based on analyses by the Center on Budget and Priorities and the Economic Policy Institute, that the economic loss to New Jersey may be anywhere from \$645 million to \$1.506 billion, with 2,900

⁴ Erika Nava, “New Immigration Rule Will Have Chilling Effect on New Jersey’s Mixed-Status Families,” (New Jersey Policy Perspective, November 2018) at 2.

to 6,800 lost jobs, depending on whether 15, 25 or 35% of immigrant households currently receiving benefits feel compelled to disenroll.⁵

In short, viewed from the perspective of individual and family well-being, immigrant reluctance to participate in programs such as Medicaid and SNAP can be expected to result in higher levels of poverty and loss of significant revenue to the State of New Jersey. At the same time, the proposed rule is likely to reduce the positive impacts of prenatal care, nutrition assistance, and timely medical care on the health of immigrant and U.S. born children in immigrant households, as well as reverse efforts taken by New Jersey and other state governments over the past 20 years to encourage eligible immigrants and their families to participate in public benefit programs ranging from CHIP to SNAP and Medicaid.⁶ Indeed, the NJ For Health Care Coalition has expended enormous efforts over the past few years during the ACA enrollment period to attract immigrant families to secure health insurance coverage for all their members. The proposed rule, if finalized, would not only make their efforts harder but would pose barriers that in reality may be insurmountable.

There is simply no rational and socially humane reason to expand the types of public benefits included in a public charge determination. The proposed rule as currently delineated would directly impact only a small number of immigrants, since almost all who are subject to the public charge determination do not qualify for public benefits. On the other hand, the proposed rule would create fear in an enormous number of immigrants who would not be subject to such determination but would nonetheless disenroll from benefit programs for which they are eligible. The bottom line is that this aspect of the public charge is designed to create confusion and fear, causing immigrant households to refrain from accepting any government assistance. The NJ For Health Care Coalition cannot condone such a motive or its likely consequences. We thus strongly oppose any change to the list of public benefits included in the public charge determination.

Conclusion

For all the foregoing reasons, we oppose all the proposed changes to the Inadmissibility on Public Charge Grounds Regulations. Such changes constitute a redefinition of “public charge” that is contrary to decades of U.S. immigration policy, and is likely to harm the social, cultural and economic fabric of communities throughout the country, especially here in New Jersey where approximately one in five residents is an immigrant.

Respectfully submitted,

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⁵ Ibid. at 5.

⁶ Batalova, et al., supra, at 30-31.