



To: US Department of Homeland Security  
From: Access Living of Metropolitan Chicago  
Re: Proposed Rulemaking on Public Charge  
Submitted via online form

## **Access Living Comments on Proposed Changes to the Public Charge Rule**

### **Introduction and Overview**

Access Living of Metropolitan Chicago is the Center for Independent Living in the City of Chicago, and recognized as a national leader in the disability rights movement since 1980. We provide direct service and advocacy to people with disabilities in Chicago; our disability systems advocacy work touches on local, state and national system.

In this memo, we offer our comments on recently proposed US Department of Homeland Security (DHS) changes to the public charge rule regarding the vetting of candidates for green cards, changes that we believe will negatively impact people with disabilities and their families as they seek to immigrate or remain in this country. The proposed changes to the public charge rule are essentially disability discrimination against immigrants with disabilities and their families who are trying to enter the US (get a visa) or get a green card (become a permanent resident). This will happen because DHS plans to expand the list of programs that determine who is a “public charge” to include those who use food stamps, Medicaid, Medicare Part D and housing assistance programs in certain amounts or over certain periods of time. Many people with disabilities use these programs.

Our position is that our country needs to be a welcoming place that aligns with internationally accepted human rights values. These proposed DHS changes have exacerbated the confusion and fear already experienced by members of immigrant communities, regardless of their citizenship status, which have been brought on by much of the immigration policies and enforcement practices that currently exist. **We strongly recommend the withdrawal of this proposal, and the establishment of a deliberative, good faith process to include immigration and disability advocates before a rule with such far-ranging implications and potential impact is again considered.**

### **Immediate Policy Impact from an Illinois Standpoint**

There are already serious and clear restrictions on the ability of immigrants with various status to use public benefits programs. Right now, Congress does not allow most non-citizens to use welfare programs, Social Security benefits like Supplemental Security Income (SSI), and non-emergency Medicaid. Congress also requires most green card applicants to have a financial sponsor – typically a

family member who is a U.S. citizen – who declares their willingness and ability to support their relative and prevent them from becoming dependent on government benefits, or becoming a "public charge."

Even if the rule changes go into effect, for Illinois residents, it is unlikely that anyone affected will actually be receiving any of the counted benefits, because these benefits are only available to US citizens and, under certain, limited circumstances, legal permanent residents. Some benefits, like medical care through the Cook County Health System and others involving no Federal sources of funding, can be used and are not counted when past benefit use is considered under the proposed rule changes. However, we realize that the situation differs from state to state, and oppose the proposed rule changes on those grounds also.

### **Impact at the Access Living Grassroots**

The proposed changes to the public charge rule are already producing examples of the unnecessary harm it will cause. For example, one of Access Living's consumers wishing to establish residency had, until recently, received care for his controllable diabetes through locally funded medical providers. His care was neither financed by nor otherwise connected to any of the public benefits programs addressed in the proposed changes to the rule. However, his desire to establish residency is so strong that he chose to forego medical care for his diabetes instead of risk being considered a public charge.

Without medical care, this man's diabetes significantly worsened. He has already required the amputation of one foot, and fear over receiving follow up care is causing further damage through the reduction in his vision. If, on processing of this man's application for residency, he is found to be a public charge risk, that risk will have been created by fear of the changes to the public charge rule. That fear is primarily borne by the community of people with disabilities seeking to normalize their status in the United States, as well as the family members with whom they may live.

### **Disability Discrimination in the Proposed Rule Changes**

At the most basic level, our opposition to the proposed rule changes is on the basis that they are fundamentally discriminatory against people with disabilities even though disability discrimination is forbidden under federal law (See Rehabilitation Act, Fair Housing Act, Americans with Disabilities Act, Rehab Act, 29 U.S.C. § 701, et seq., Fair Housing Act, 42 U.S.C. § 3601, et seq., ADA, 42 U.S.C. § 12101, et seq.). Furthermore, these proposed changes to public charge are not based on public need but on historical biases that assume that poor people, people of color and/or people with disabilities do not significantly contribute to US society<sup>1</sup> [1][2].

Unfortunately, noncitizens with disabilities are more likely to experience the most severe consequences of this bias and inequality, including exacerbation of present health condition(s), acquiring other conditions, and death<sup>2</sup>. Hence, the changes proposed to the public charge rule will significantly add to a growing population of people residing in the United States without the civil and human rights protections afforded to most of the people in the country. The social and economic consequences of creating such an underclass are far greater than the cost associated with providing a fair and sustainable path to legal residency and/or citizenship that enables equitable access to resources and opportunities.

---

<sup>1</sup> Glenn, E. N. (2002). *Unequal freedom: How race and gender shaped American citizenship and labor*. Cambridge, MA: Harvard University Press. Bayton, D. (2005). Slaves, immigrants, and suffragists: The uses of disability in citizenship debates. *PMLA*, 120, 562-567.

<sup>2</sup> Huang, Z.J., Yu, S. M. and R. Ledsky (2006). Health status and health service access and use among children in U.S. immigrant families. *American Journal of Public Health*. 96: 634-640.

As with mass institutionalization and mass incarceration, it is simply more cost-effective to give people access to community-based services and supports than to deny them, lock them up, and exclude them from community and economic activity.<sup>3</sup>

Furthermore, the proposed changes to the public charge rule require immigrants with disabilities to meet economic standards which do not account for the documented barriers to employment and wealth accumulation typically faced by citizen with disabilities<sup>4</sup> in this country. These barriers produce economic inequalities which disadvantage citizens with disabilities whom presumably qualify for a multitude of services and opportunities unavailable to noncitizens. In addition, although research suggests that access to quality health care is imperative for increased economic opportunities for people with disabilities<sup>5</sup>, the proposed changes to the public charge rule could also impact some undocumented immigrants, such as people covered under the Deferred Action for Childhood Arrivals (DACA) program, should they choose to apply for permanent residency. In short, the proposed changes to the public charge rule create a poverty trap<sup>6</sup> for noncitizens. This trap includes requiring noncitizens to meet economic and other standards to obtain legal residence, without providing or enabling the resources and opportunities to meet those standards, such as access to equitable and quality health care, employment and other social supports.

### **Impact on International Disability Rights Work**

Access Living has long been engaged on international work for decades, working with organizations such as Rehabilitation International<sup>7</sup>, Humanity and Inclusion<sup>8</sup>, and Human Rights Watch<sup>9</sup>. Our leadership, after helping to pass the Americans with Disabilities Act, and being a key stakeholder in ADA regulations development, went on to support international development of the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD)<sup>10</sup>. The UN CRPD is based on concepts within the ADA. Article 18 of the UN CRPD<sup>11</sup> specifically addresses the human right of people with disabilities who are migrants and refugees. Access Living played a key role in the national effort to have the UN CRPD ratified by the U.S. Senate.

Our commitment to all people with disabilities, including immigrants, is therefore of long standing and has a close link to our work in international disability rights development. We are keenly aware of the way that disability can be used as a screen to violate the human rights of people with disabilities and their families. We, and our international allies, strongly condemn disability discrimination for

---

<sup>3</sup> Newcomer RJ, Ko M, Kang T, et al. (2016). Health care expenditures after initiating long-term services and supports in the community versus in a nursing facility. *Medical Care*. 54:221–228.

<sup>4</sup> Goodman, N., Morris, M., Boston, K. and D. Walton (2017). Financial inequality: Disability, race and poverty in America. National Disability Institute report.

<http://www.nasuad.org/sites/nasuad/files/Disability-Race-Poverty-in-America.pdf>

<sup>5</sup> She, P. & Livermore, G.A. (2007) Material Hardship, Poverty, and Disability among Working-Age Adults. *Social Science Quarterly*. (88)4:970-989

<sup>6</sup> Stapleton, D.C., O’Day, B, Livermore, G.A., Imperato, A.J. (2006) Dismantling the poverty trap: Disability policy for the 21<sup>st</sup> century. *The Milbank Quarterly*, 84,: 701–732.

<sup>7</sup> See <http://www.riglobal.org/>

<sup>8</sup> See <https://www.hi-us.org/>

<sup>9</sup> See <https://www.hrw.org/>.

<sup>10</sup> See [https://www.un.org/development/desa/disabilities/refugees\\_migrants\\_with\\_disabilities.html](https://www.un.org/development/desa/disabilities/refugees_migrants_with_disabilities.html).

<sup>11</sup> <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-18-liberty-of-movement-and-nationality.html>

immigrants, on behalf of the over 1 billion people with disabilities worldwide. That's 15% of the world's population.<sup>12</sup>

### **Long Term Impact**

Aside from causing confusion and fear in the short term, it also seems clear that the proposed changes to the public charge rule are designed to deter or even prevent legal attempts to enter this country and seek residency by people with disabilities, disabled people, and their families in the future. The proposed changes to the public charge rule are explicitly discriminatory in saying that people could be denied entry into the US if their income or health condition don't meet stated criteria. That policy will deny immigration to productive, valuable individuals solely based on stereotypes about disability. Doing so will also cut off real opportunities for economic advancement and quality healthcare that simply may not be available in countries of origin. Finally, this rule could even deter disabled people fleeing immediate life-threatening danger as refugees, though the law already exempts a number of categories of refugees and asylees from "public charge" inadmissibility, included in the proposed rule as 8 CFR 212.23(a). As members of an international disability community, this potential impact particularly saddens us as an organization.

The proposed changes to this rule expand the scope and impact of what is already an inherently unjust concept. As Access Living and our partners in the National Coalition of Latinxs with Disabilities (CNLD) recently phrased it in a memo to a potential funder:

"Immigration law, which historically has excluded individuals with disabilities, continues to explicitly maintain vague language that prohibits entry of anyone "likely to become a public charge" (8 U.S.C. 1182 § 212(A)(4)). The law also explicitly prohibits individuals with "physical and mental disorders" who have "harmful behaviors" that pose a threat to oneself or others from immigrating to the U.S (8 U.S.C. 1182 § 212(A)(2)(A)(iii)). Through the naturalization process, immigration law requires that immigrants have a level of mental capacity that may present difficulties for individuals with mental and intellectual disabilities. When a petitioner or applicant does not have the mental capacity to comply with immigration procedures, there are no immigration laws or regulations that give guidance. Discretion is left to the judges."

These barriers will only serve to continue and possibly accelerate the trend of undocumented individuals with disabilities staying in inaccessible communities and keeping a low profile, which is their only option if there is no hope of a legal pathway to residency and/or citizenship. Doing so will only hurt families that are already disadvantaged, and will have an adverse effect on public health costs as well. Again, as our memo with CNLD laid out:

"Undocumented immigrants with disabilities fare much worse than their documented counterparts. Lack of healthcare insurance and access to public benefits such as Medicaid can be deadly for poor and undocumented immigrants who require medical attention... many immigrants with disabilities may not identify as an individual with a disability for a variety of reasons including stigma and lack of access to the diagnostic structures (i.e. medical, psychiatry). This is problematic because lack of identification usually corresponds to a lack of knowledge about disability rights and resources."

---

<sup>12</sup> See <https://www.worldbank.org/en/topic/disability>.

Barring most, if not all, immigrants with disabilities from any possible path to residency and/or citizenship has widespread implications beyond basic morality and social cost. The ability to live independently for many current “legal” residents and citizens with disabilities will also be endangered. Immigrants make up a significant part of the home care/personal care workforce, workers that allow people with all kinds of disabilities to live independently. Ai-jen Poo of Caring Across Generations shows the impact of bad immigration policy like the proposed changes to the public charge rule on these workers: “With so many care workers... being undocumented immigrants, and the growing need for care requiring millions of new jobs, immigration reform is a huge part of the care infrastructure solution. The workforce we’re relying on... can’t even take care of their own families on the wages they are earning, and in some cases live in fear of deportation.”<sup>13</sup>

Fundamentally, the proposed changes to the public charge rule could seriously limit the type of opportunity for advancement that our country is so proud of touting, particularly with disabilities in an era where disabled people and our support workers could create more workforce opportunity than at any previous point in history to date.

### **Conclusion**

We at Access Living are deeply concerned about the discriminatory stereotypes of people with disabilities at the heart of the proposed rule. Disability status does not determine an individual’s social worth. We are also deeply concerned that the proposed rule will put immigrants with disabilities at risk by deterring them from seeking and getting the essential services and supports they need to live in a way that is safe and healthy. We are already witnessing the impacts of this discriminatory proposed rule change as increasing numbers of immigrants with disabilities and their families are dis-enrolling themselves from programs and services that they are eligible for because they fear jeopardizing their immigration status or that of their loved ones. People with disabilities and their families often need to use basic social benefits in order to continue living independently, contribute to the community and stay healthy. Under the new rule, using – or even just applying for – these benefits could count against you. **We believe that disability rights are human rights, and human rights include the right to access medical care, food, and shelter.** We ask that this proposal and its inherent exclusion, division, and disregard be withdrawn; and new policies, informed by deliberate stakeholder involvement, be offered in its place.

Questions and comments regarding this input may be directed to Access Living’s Director of Advocacy, Amber Smock, at [asmock@accessliving.org](mailto:asmock@accessliving.org).

---

<sup>13</sup> See <https://caringacross.org/caregiving-takes-center-stage-national-issue/>