



Dec. 10, 2018

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

Re: Notice of Proposed Rulemaking: Inadmissibility on Public Charge Grounds,  
DHS Docket No. USCIS-2010-0012, RIN 1615-AA22

Dear Ms. Deshommès:

The National Disability Rights Network (NDRN) writes to express our strong opposition to the above-captioned proposed rule.

NDRN is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) agencies for individuals with disabilities. The P&As were established by Congress to protect the rights of people with disabilities and their families. The P&As are in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands), and there is a P&A affiliated with the Native American Consortium in the Four Corners region of the Southwest. Collectively, the

57 P&As are the largest provider of legally based advocacy services to people with disabilities in the United States.

For the reasons detailed in the comments that follow, we strongly oppose the proposed rule and we urge the Department of Homeland Security (DHS) not to adopt the proposed modifications to the rule.

We believe that the proposed rule would:

- Greatly harm immigrant families with an adult or child who has a disability by discouraging enrollment in needed services;
- Violate current immigration policy;
- Undermine the purpose of the public charge rule by increasing reliance on costly late-stage and emergency care;
- Contradict the reasoned analysis of multiple federal agencies with relevant expertise supporting the rules laid out in the Immigration and Naturalization Service's (INS's) 1999 interim guidance concerning public charge determinations;<sup>1</sup>
- Violate federal anti-discrimination law.

## **1. The Proposed Rule Would Harm People with Disabilities and Lead Many to Avoid Using Needed Services**

The proposed rule, if adopted, would cause great harm to people with disabilities. In contrast to the current rule and DHS's guidance, which reflect a careful balance designed to ensure that people do not avoid or disenroll from critically needed medical services and housing assistance out of fear that these services might result in a public charge determination, the proposed rule would greatly increase the risks of such disenrollment or avoidance by dramatically expanding

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<sup>1</sup> U.S. Dep't of Justice, Immigration and Naturalization Service, *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds* (May 26, 1999), and U.S. Dep't of Justice, Immigration and Naturalization Service, *Memorandum of Michael A. Pearson, Executive Associate Commissioner, Office of Field Operations, for All Regional Directors* (May 20, 1999), <https://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-54070/0-0-0-54088/0-0-0-55744.html>.

the types of assistance that would count against individuals in public charge determinations, significantly lowering the threshold for counting benefits against individuals, and heavily weighting the negative impact of such benefit receipt.

**a. *Abandoning the “Primarily Dependent” Standard***

First, rather than focusing on whether a person is likely to become “primarily dependent on the government for subsistence,” as the government currently does (meaning that public benefits represent more than half of the person’s income and support)<sup>2</sup> the proposed rule would adopt a staggeringly low threshold of counting all monetizable benefits with a combined value that exceeds 15% of the Federal Poverty Guidelines for a household of one within 12 months (just over \$1800), or for non-monetizable benefits, receipt of such benefits for at least 12 months within a 3-year period.<sup>3</sup> Despite acknowledging that the current approach is straightforward and easy to administer,<sup>4</sup> DHS proposes a dramatic change to count anything above a “nominal”<sup>5</sup> level of benefits without any specific evidence demonstrating why this change is necessary or justifying the particular threshold of 15% of the Federal Poverty Guidelines.

**b. *Expanding the Types of Benefits Considered***

Second, the proposed rule would vastly expand the types of benefits that count toward this ‘anything above nominal’ threshold. The current rule applied by the government, set forth by the INS (now the U.S. Citizenship and Immigration Services within the Department of Homeland Security) after extensive consultation with other federal agencies with relevant expertise (including the Department of Health and Human Services, the Social Security Administration, and the U.S. Department of Agriculture), counts only cash benefits for income maintenance

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<sup>2</sup> Dep’t of Homeland Security Notice of Proposed Rulemaking, 83 Fed. Reg. 51114, 51163 (Oct. 10, 2018), <https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf>.

<sup>3</sup> *Id.* at 51158, 51164.

<sup>4</sup> *Id.* at 51164.

<sup>5</sup> *Id.* at 51165.

(such as Temporary Aid to Needy Families and Supplemental Security Income) and long-term institutionalization at government expense in considering the “resources” factor in public charge determinations.<sup>6</sup> These agencies agreed that receipt of cash benefits and long-term institutionalization were the “best evidence” of whether a person is primarily dependent on the government for subsistence, and that other benefits should be excluded.<sup>7</sup>

In particular, the INS “sought to reduce negative public health and nutrition consequences generated by the confusion [about public charge determinations]” and

...aimed to stem the fears that were causing noncitizens to refuse limited public benefits, such as transportation vouchers and child care assistance, so that they would be better able to obtain and retain employment and establish self-sufficiency.<sup>8</sup>

Without specific evidence justifying its massive proposed change, DHS proposes to expand the consideration of benefits to include a slew of benefits and services commonly used by people with disabilities, including Medicaid, Supplemental Nutrition Assistance Program (SNAP or Food Stamps) benefits, Section 8 housing vouchers and project-based rental assistance, Medicare Part D benefits, and possibly Children’s Health Insurance Program (CHIP) benefits.

The proposed rule correctly notes that the “wide array of limited-purpose public benefits now available did not yet exist” at the time that the public charge rule was developed in the 19<sup>th</sup> century,<sup>9</sup> but ignores the fact that these benefits were well-established and considered when the INS and other agencies determined that most of them should be excluded in public charge determinations.

### ***c. Heavily Weighting Receipt of Benefits as a Negative Factor***

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<sup>6</sup> *Id.* at 51133.

<sup>7</sup> *Id.* at 51133, 51163-64.

<sup>8</sup> *Id.* at 51133.

<sup>9</sup> *Id.* at 51164.

The proposed rule also specifies that receipt of or approval for benefits would now be considered a “heavily weighted negative factor” in determining whether a person is likely to become a public charge.<sup>10</sup>

***d. Modifying the “Health” Factor***

The proposed rule would also add new language to the current regulation describing how an individual’s health is to be considered in making public charge determinations. The new language would specify that, when considering an individual’s health, DHS will consider “whether the alien has any physical or mental condition that . . . is significant enough to interfere with the person’s ability to care for him- or herself or to attend school or work, or that is likely to require extensive medical treatment or institutionalization in the future.”<sup>11</sup>

The proposed rule would also heavily weight against a person the presence of a health condition likely to require extensive medical treatment or interfere with the ability to provide for oneself, work, or attend school if the person has no prospect of securing private insurance and no means to pay for reasonably foreseeable medical costs.

***e. These Changes Would Cause Great Harm to People with Disabilities***

Taken together, the combined effect of: 1) dramatically expanding the benefits that count against a person in a public charge determination; 2) lowering the threshold to consider all benefits above a “nominal” amount; 3) heavily weighting receipt of these benefits against a person; and 4) along with heavily weighting of health impairments, would effectively place virtually anyone with a significant disability in serious jeopardy of being deemed likely to become a public charge.

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<sup>10</sup> *Id.* at 51292.

<sup>11</sup> *Id.* at 51182.

In addition to the harms that may be caused by actually finding an adult or child likely to become a public charge and preventing this person from obtaining lawful permanent resident status, the proposed rule would cause precisely the type of damage that led the INS to exclude consideration of most of these benefits previously: it would lead many people to decline needed health and other services, creating “negative public health and nutrition consequences” and making it more difficult for people to secure employment. Indeed, there is evidence that even before reports of the contents of the proposed rule surfaced, “families were already experiencing growing fears of participation in health, nutrition, and other programs that led them to disenroll or avoid enrolling themselves and their children.”<sup>12</sup>

## **2. THE PROPOSED REGULATIONS WOULD RADICALLY CHANGE SETTLED IMMIGRATION POLICY, NEEDLESSLY HARMING INDIVIDUALS AND FAMILIES.**

Under longstanding Department policy, an immigrant seeking entry or change of status is considered a “public charge,” and thereby excludable, if she or he is “primarily dependent on the government for subsistence,” meaning that public benefits represent more than half of the person’s income and support. As discussed above, the proposed rules would radically expand the definition of “public charge,” to include any immigrant who simply “receives one or more public benefits.” This would dramatically increase the scope of who would be considered a public charge to include people who are working, attending school, assisting in the home, or otherwise positively engaged in their communities, but who need to use certain government programs such as Medicaid or SNAP.

### **a. The Proposal Upends Settled Immigration Policy.**

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<sup>12</sup> Henry J. Kaiser Family Foundation, Proposed Changes to “Public Charge” Policies for Immigrants: Implications for Health Coverage, <https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage>.

For almost two decades, through administrations of both parties, U.S. immigration officials have explicitly reassured immigrant families that participation in programs like Medicaid and SNAP (formerly food stamps) would not affect their ability to become lawful permanent residents.<sup>13</sup> But if the proposed rules are finalized, immigration officials would begin considering a much wider range of government programs in the “public charge” determination, and would direct officials to begin negatively weighing certain factors in the public charge analysis, including whether a person. In addition, the proposal would add additional factors to be positively weighed, including whether a person:

- Has income above 250 percent of the FPL; and
- Demonstrates English proficiency.

These proposed changes to the public charge determination are contrary to settled immigration policy. In 1996, Congress adopted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) that excluded certain categories of immigrants from receiving certain benefits. Under the PRWORA, certain immigrants remain eligible for Medicaid, CHIP, and other federal means-tested benefits.<sup>14</sup> Shortly after, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) that codified five factors considered as part of the public charge determination: age; health; family status; assets, resources, and financial status; and education and skills.<sup>15</sup> In enacting the IIRIRA, Congress made no changes to the PRWORA provisions permitting immigrants to receive certain public benefits.

In 1999, after extensive consultation with other federal agencies, the Department’s predecessor, Immigration and Naturalization Services, issued a guidance document which clarified the assessment to be used to determine whether an individual is a “public charge” under the five statutory factors. The guidance document set out the standard that has been in

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<sup>13</sup> U.S. Citizenship and Immigration Services, *Public Charge*, <https://www.uscis.gov/greencard/public-charge> (last accessed Nov. 12, 2018).

<sup>14</sup> See Pub. L. 104-193, tit. IV, 110 Stat. 2105, 2260-77.

<sup>15</sup> Omnibus Consolidated Appropriations Act, 1997, PL 104-208, 110 Stat 3009 (Sept. 30, 1996), Section 531.

place for two decades: a person is a “public charge” if they are or are likely to become “primarily dependent on the government for subsistence, as demonstrated by either: (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense.”

The 1999 guidance document responded to concerns that officers were improperly scrutinizing the use of health and nutrition programs in assessing public charge,<sup>16</sup> and sought to combat the “chilling effect” of the 1996 law by alleviating fears that were causing some immigrants to forego basic supports for which they were eligible.<sup>17</sup> Evidence before the agency when it was writing the guidance included: accounts of pregnant women with gestational diabetes terrified of seeking care; a child with seizures rushed to the hospital whose parents were afraid to enroll in Medicaid at the hospital so he could continue treatment; and farmworker women afraid to enroll in a state-funded perinatal case management program.<sup>18</sup> As the guidance acknowledged, “[t]his reluctance to access benefits has an adverse impact not just on the potential recipients, but on public health and the general welfare.”<sup>19</sup>

Since the issuance of the 1999 guidance, Congress has amended the public charge provision several times, but has never disrupted the agency’s standard.<sup>20</sup>

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<sup>16</sup> Department of Justice, Immigration and Naturalization Service, Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 FR 28689-01 (May 26, 1999) (hereinafter 1999 Field Guidance) (“[O]fficers should not place any weight on the receipt of non-cash public benefits (other than institutionalization) or the receipt of cash benefits for purposes other than for income maintenance with respect to determinations of admissibility or eligibility for adjustment on public charge grounds.”)

<sup>17</sup> October 2018 Public Charge NPRM at 51133 (“INS sought to reduce negative public health and nutrition consequences generated by the confusion and to provide ... better guidance as to the types of public benefits that INS considered relevant to the public charge determinations. INS also sought to address the public’s concerns about immigrants’ fears of accepting public benefits for which they remained eligible, specifically in regards to medical care, children’s immunizations, basic nutrition and treatment of medical conditions that may jeopardize public health. With its guidance, INS aimed to stem the fears that were causing noncitizens to refuse limited public benefits, such as transportation vouchers and child care assistance, so that they would be better able to obtain and retain employment and establish self-sufficiency.”).

<sup>18</sup> See Claudia Schlosberg et. al, National Immigration Law Center, The Impact of INS Public Charge Determinations on Immigrant Access to Health Care (1998), <https://www.montanaprobono.net/geo/search/download.67362>.

<sup>19</sup> 1999 Field Guidance at 64 FR 28689-01.

<sup>20</sup> See Family Sponsor Immigration Act of 2002, PL 107–150, March 13, 2002, 116 Stat 74, at § 2; Violence Against Women and Department of Justice Reauthorization Act—Technical Corrections, PL 109–271, August 12, 2006, 120 Stat 750, at § 6(b); Violence Against Women Reauthorization Act of 2013, PL 113-4, March 7, 2013, 127 Stat 54, at

**b. The Proposal is Unsupported by Evidence, and Disregards Research Showing That Non-Cash Benefit Programs Promote Employment and Self-Sufficiency.**

The Department now seeks to upend this settled understanding, and make massive changes to the legal landscape, without any justification based on data or experience. The NPRM references purported cost-savings, but presents no empirical evidence to support this claim. In fact, rather than limiting government spending on individuals who have immigrated to the U.S., the proposed changes are likely to have the opposite effect. The disenrollment of large numbers of individuals from needed health, housing, nutrition and other benefits (or their non-enrollment in such benefits) is likely to drive up health care costs. Removing access to medical care, housing, or food assistance can be expected to lead to increased use of costly emergency department services, temporary hospitalizations, and complex late-stage treatment that could have been avoided if individuals received far less costly preventive care and housing assistance. Moreover, despite universal agreement that regular outpatient care is the most effective and efficient way to maintain individual and public health, the proposal would not consider emergency Medicaid services,<sup>21</sup> creating perverse incentives for individuals to bypass clinics and doctors' offices for delayed care in emergency rooms.

Moreover, the proposal disregards a large body of research demonstrating positive long-term positive effects of receipt of many of the benefits that are included in the public charge determination, including SNAP and Medicaid. In particular, the use of these benefits enables workers (especially those in the low-wage workforce) to remain employed.<sup>22</sup> In addition, states

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§ 804; see also Victims of Trafficking and Violence Protection Act of 2000, PL 106–386, October 28, 2000, 114 Stat 1464, at § 1505 (exempting certain trafficking victims from public charge assessment); Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) ACT OF 2001, PL 107–56, October 26, 2001, 115 Stat 272, at § 423 (exempting certain surviving spouses and children from public charge assessment); Trafficking Victims Protection Reauthorization Act of 2003, PL 108–193, December 19, 2003, 117 Stat 2875, at § 4 (exempting certain trafficking victims from public charge assessment).

<sup>21</sup> See Proposed 8 C.F.R. § 212.21(b)(2)(i)(A).

<sup>22</sup> See, e.g., Matthew Desmond & Carl Gershenson, *Social Problems, Housing and Employment Insecurity among the Working Poor* (2016),

<https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824>; Nat'l

frequently use Medicaid to transition individuals from public to private sources of insurance coverage through the Transitional Medical Assistance (TMA) program.<sup>23</sup> The proposal would harm these efforts to transition individuals to private coverage and long-term participation in the workforce.

**c. The Proposal Is Already Harming Immigrant Families – and Finalizing the Rules Would Only Cause More Harm.**

Immigrant families have already begun foregoing critical services and benefits for which they are legally eligible out of fear for immigration consequences. In 2017, providers reported increased requests to disenroll from means-tested programs, increased canceled appointments at health clinics, and drops in attendance and applications at early childhood education programs.<sup>24</sup> A 2018 survey of California health care providers found that more than two-thirds (67 percent) saw an increased concern among immigrant parents about enrolling their children in Medi-Cal (California’s Medicaid program), WIC and CalFresh (California’s SNAP program), and nearly 40 percent saw an increase in interest in disenrolling. Forty-two percent reported an increase in missed scheduled health care appointments.<sup>25</sup> Following the circulation of leaked drafts of the proposed rules earlier this year, immigrant families across the country began

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Women’s Law Ctr., *Medicaid Is Vital for Women’s Jobs in Every Community* (2017), <https://nwlc.org/resources/medicaid-is-vital-for-womens-jobs-in-every-community/>; Ctr. on Budget & Pol’y Priorities, *Chart Book: The Far-Reaching Benefits of the Affordable Care Act’s Medicaid Expansion* (2018), <https://www.cbpp.org/research/health/chart-book-the-far-reaching-benefits-of-the-affordable-care-acts-medicaid>.

<sup>23</sup> Medicaid and CHIP Payment and Access Commission, *Promoting Continuity of Medicaid Coverage among Adults under Age 65* (Mar. 2014), <https://www.macpac.gov/publication/ch-2-promoting-continuity-of-medicaid-coverage-among-adults-under-age-65/>.

<sup>24</sup> Jennifer Laird et al., Columbia Population Research Center, *Foregoing Food Assistance Out of Fear Changes to “Public Charge” Rule May Put 500,000 More U.S. Citizen Children at Risk of Moving into Poverty* (2018), p. 1, <https://static1.squarespace.com/static/5743308460b5e922a25a6dc7/t/5af1a2b28a922db742154bbe/1525785266892/Poverty+and+Social+Policy+Brief+2+2.pdf>; Hannah Matthews et al., The Center for Law and Social Policy, *Immigration Policy’s Harmful Impacts on Early Care and Education* (2018), pp. 2, 6, [https://www.clasp.org/sites/default/files/publications/2018/03/2018\\_harmfulimpactsece.pdf](https://www.clasp.org/sites/default/files/publications/2018/03/2018_harmfulimpactsece.pdf).

<sup>25</sup> The Children’s Partnership, *Healthy Mind, Healthy Future: Promoting the Mental Health and Wellbeing of Children in Immigrant Families*, <https://www.childrenspartnership.org/priorities/healthy-mind-healthy-future/> (last accessed Nov. 21, 2018).

dropping out of the WIC program.<sup>26</sup>

Finalizing the proposed rules would only worsen this destructive trend. Researchers report that the rules would discourage millions of immigrants from accessing health, nutrition, and social services.<sup>27</sup> According to the Kaiser Family Foundation, between 2.1 million to 4.9 million Medicaid/CHIP enrollees could disenroll if the proposal is finalized.<sup>28</sup> The chilling effects are further predicted to extend far beyond individual non-citizens to their entire household, including citizens. Approximately 25.9 million people, about 8 percent of the U.S. population, live in low-income households with at least one non-citizen member.<sup>29</sup> Ninety percent are people of color.<sup>30</sup> More than 9.2 million are children under 18.<sup>31</sup>

The proposed changes would needlessly harm individuals, families, and communities, barring and discouraging people from using the basic public programs their tax dollars help support. The changes would certainly increase poverty, hunger, avoidable health outcomes, and unstable housing. The rules would have particular consequences for immigrant women and immigrants with disabilities.

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<sup>26</sup> Helena Bottemiller Ulrich, Politico, *Immigrants, Fearing Trump Crackdown, Drop Out of Nutrition Programs* (Sept. 3, 2018), <https://www.politico.com/story/2018/09/03/immigrants-nutrition-food-trump-crackdown-806292>.

<sup>27</sup> Jeanne Batalova, Michael Fix, & Mark Greenberg, Migration Policy Institute, *Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use* (2018), <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>.

<sup>28</sup> Samantha Artiga, Raphael Garfield, & Anthony Damico, Kaiser Family Foundation, *Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid* (2018), <https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaid/> (predicting disenrollment rates between 15 percent and 35 percent).

<sup>29</sup> This number represents individuals and family members with at least one non-citizen in the household and who live in households with earned incomes under 250 percent of the federal poverty level. Custom Tabulation by Manatt Phelps & Philips LLP, *Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard* (2018), <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population> (using 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 2012-2016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk).

<sup>30</sup> Of those potentially affected by the rule, 23.2 million are non-white, including 18.3 million Latinos, 3.2 million Asians, and 1.8 million Black people. To put this in perspective, among all people of color in the country (of all income levels and citizenship statuses), 33 percent of Latinos, 17 percent of Asians, and 4 percent of Black people would potentially be impacted by the proposed rule. By contrast, about 1.5 percent of white people would potentially be affected. Manatt Phelps & Philips LLP, *supra* n. \_\_.

<sup>31</sup> Manatt Phelps & Philips LLP, *supra* n. \_\_ (9.2 million children under 18 live in households with at least one non-citizen family member with income below 250% FPL).

### **3. The Proposed Rule Would Undermine the Purpose of the Public Charge Rule by Driving Up Public Costs**

Rather than limiting government spending on individuals who have immigrated to the U.S., the proposed changes to the rule are likely to have the opposite effect. The disenrollment of large numbers of individuals from needed health, housing, nutrition and other benefits (or their non-enrollment in such benefits) is likely to drive *up* health care costs. Removing access to medical care, housing, or food assistance can be expected to lead to increased use of costly emergency department services, temporary hospitalizations, and complex late-stage treatment that could have been avoided if individuals received far less costly preventive care and housing assistance. The costs of such emergency services and late-stage care would typically be borne by local, state and/or federal government assistance.

### **4. The Proposed Rule Improperly Construes the Statute in a Manner Inconsistent with Federal Anti-Discrimination Law**

Section 504 of the Rehabilitation Act prohibits disability-based discrimination in any program or activity of a federal executive branch agency, including DHS.<sup>32</sup> To the extent that the Immigration and Nationality Act (INA) applies to federal agency programs and activities regulated by Section 504, it must be read *in pari materia* with Section 504. Accordingly, the INA's provisions concerning public charge determinations must be read in a manner that aligns with Section 504's prohibition on disability-based discrimination.

The proposed rule's breathtakingly broad reading of the statutory "health" and "resources" factors for public charge determinations are inconsistent with Section 504's prohibition on disability-based discrimination. As noted above, together these modifications would likely result in virtually all people with any type of significant disability being considered a public

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<sup>32</sup> 29 U.S.C. § 794(a).

charge. These determinations would be made based on heavily weighting benefits such as Medicaid that are essential for large numbers of people with disabilities<sup>33</sup> as well as directly considering individuals' disabilities and adversely treating any significant disability. Contrary to DHS's argument that these determinations are individualized and would merely consider disability as part of the "totality of circumstances,"<sup>34</sup> the proposed formula effectively authorizes blanket determinations that anyone with a significant disability is likely to become a public charge.

This reading of the public charge statute is not only inconsistent with the intent of the Immigration and Nationality Act, which was previously amended to ensure that individuals were not determined inadmissible based simply on their disability status,<sup>35</sup> but is also inconsistent with Section 504's bar on disability-based discrimination in DHS's programs and activities. DHS states that it is not singling out people with disabilities because other factors must be considered as well, but between the proposal to adversely consider any significant disability under the health factor, the proposal to give heavy negative weight to receipt of benefits used by large numbers of people with significant disabilities, and the proposal to give heavy negative weight to having such a disability without private insurance coverage or the means to pay independently for medical costs, these provisions undoubtedly single out people with disabilities.

## Conclusion

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<sup>33</sup> For many individuals with disabilities, Medicaid is the only possible source of coverage for the home and community-based services that they need to live and work in their communities. Commercial insurance generally does not cover services such as attendant care, skill-building services, peer support, crisis services, respite care, and employment services.

<sup>34</sup> 83 Fed. Reg. 51184.

<sup>35</sup> Shortly after passage of the Americans with Disabilities Act, the Immigration and Nationality Act was amended to eliminate provisions that made individuals inadmissible on the basis of having certain disabilities. Immigration Act of 1990, PL 101-649, 104 Stat 4978, sections 601-603 (Nov. 29, 1990) (deleting and replacing language excluding "[a]liens who are mentally retarded," "[a]liens who are insane," "[a]liens who have had one or more attacks of insanity," "[a]liens afflicted with psychopathic personality, or sexual deviation, or a mental defect," and "[a]liens who are ... chronic alcoholics").

In conclusion, we strongly oppose the proposed rule for the reasons identified above, and we urge DHS not to adopt the proposed modifications to the rule. For any questions or for additional information, please contact Diane Smith Howard at [diane.smithhoward@ndrn.org](mailto:diane.smithhoward@ndrn.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Curtis Decker". The signature is fluid and cursive, with the first name "Curtis" written in a larger, more prominent script than the last name "Decker".

Curtis Decker  
Executive Director, NDRN