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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:

Thank you for the opportunity to comment on the Department of Homeland Security's (DHS, or "the Department") proposed changes to its rule entitled *Inadmissibility on Public Charge Grounds*. Community Catalyst is a national, non-profit health care advocacy organization whose mission is to ensure that all individuals, including immigrant children and families, have access to quality, affordable health care. We write to express our alarm with and strong opposition to the proposed rule because it is substantially out of line with Congressional intent, and would cause harm to: 1) the United States economy and its global competitiveness, 2) states, localities and health care providers, as well as 3) immigrants and their families. We urge the Department to withdraw the proposed rule in its entirety, and instead continue to follow the current policies found in the 1999 Immigration and Naturalization Service (INS) field guidance.[1]

The proposed rule violates Congressional intent and therefore the Department is exceeding its regulatory authority with this proposal

The INS followed Congressional intent by issuing guidance defining "public charge" as anyone "who has become or who is likely to become *primarily dependent* (emphasis added) 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."[2] By proposing to change the definition of "public charge" to "an immigrant who receives one or more public benefits," the proposed rule makes an arbitrary and capricious departure from the legislative intent behind the Immigration and Nationality Act (INA). Receiving one or more of the six types of benefits the rule proposes[3] is a significantly lower standard than primarily relying on two categories of public benefits for subsistence. Not only that, but INS explicitly states in its guidance that the receipt of non-cash benefits should not be a determining factor in deciding whether an individual is likely to become a public charge.[4] Therefore, the Department exceeds its regulatory authority by changing the definition of "public charge" and expanding the types of public benefits to consider in the way it is proposing.

[1] *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, 64 Fed. Reg. 28689, 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
[2] See footnote 1
[3] Specifically: 1) many forms of Medicaid, 2) the Supplemental Nutrition Assistance Program, 3) the Medicare Part D Low-Income Subsidy program and 4) Section 8 housing assistance programs, in addition to 5) the cash benefit programs and 6) institutionalization programs for long-term care that the current rule includes
[4] Specifically, the guidance states that "officers 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."

Additionally, Congress expanded the ability of certain immigrant populations to access certain public benefits such as the Supplemental Nutrition Assistance Program (SNAP) and Medicaid, and therefore adding these programs to the list of public benefits that could make someone more likely to become a public charge violates Congressional intent. For example, the 2002 Farm Bill[5] expanded the ability of immigrant children to receive SNAP, as well as immigrants receiving disability benefits. In 2009, Congress enacted the Children's Health Insurance Program Reauthorization Act (CHIPRA),[6] which included the Legal Immigrant Child Health Improvement Act (ICHIA), to allow lawfully present immigrant children and those who are pregnant to be able to enroll in Medicaid and CHIP without needing to wait 5 years (i.e., "meet the 5-year bar). Therefore, by placing these individuals in a position in which they may not be able to receive both the public benefits and immigration status they are eligible to receive, the Department exceeds its regulatory authority.

If Congress intended to change the public charge rule in the way the Department proposes, including expanding the list of public benefits used in the test and expanding the categories of immigrants the test applies to, it could have and would have done so. However, Congress has had several opportunities to amend the public charge law but instead has only affirmed existing administrative interpretations of the law. For example, in 1986, Congress enacted a "special rule" for overcoming the public charge test if an immigrant "demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance."[7] "Public cash assistance" was defined as "income or needs-based monetary assistance" including programs like SSI, a program that is currently part of the test, but specifically excluding food stamps, public housing and medical assistance.[8] Therefore, by adding programs such as SNAP, Section 8 housing assistance, many forms of Medicaid and the Medicare Part D Low-Income Subsidy Program to the test, the Department violates Congressional intent.

Additionally, the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) limited eligibility for "federal means-tested public benefits," such as Medicaid and SNAP, to "qualified" immigrants, and defined "qualified" as being a lawful permanent resident who has held that status for 5 years or more. Despite restricting eligibility for these benefits in this way, Congress did not add those "means-tested public benefits" to the application of public charge. After passage of the PRWORA, the INS issued the field guidance mentioned above. This guidance is therefore consistent with Congressional intent, while the Department's proposed rule is clearly an arbitrary and capricious departure. Overall, if the Department seeks to change the definition of and test for "public charge" in the drastic way it proposes, it should wait for Congress to change the Immigration and Nationality Act accordingly, or it risks exposing itself to litigation for abusing its discretion.

The proposed rule will disproportionately harm children and individuals who are pregnant

Another reason the proposed rule is out of line with Congressional intent is that it violates the intent of ICHIA, mentioned above, in which Congress explicitly allowed lawfully present immigrant children and those who are pregnant to access Medicaid and CHIP without needing to wait 5 years. Currently, 34 states and the District of Columbia have chosen to implement ICHIA.[9] However, due to the rule's proposal to include many forms of Medicaid, and possibly CHIP, as one of the public benefits that will factor into the determination test, pregnant people and children are now at an increased risk of being determined a public

[5] 7 U.S.C. 7901, https://www.gpo.gov/fdsys/pkg/PLAW-107publ171/pdf/PLAW-107publ171.pdf

[6] Children's Health Insurance Program Reauthorization Act of 2009, https://www.gpo.gov/fdsys/pkg/PLAW-111publ3/pdf/PLAW-111publ3.pdf

[7] INA §245A(d)(2)(B)(iii), https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-7668/0-0-0-7794.html#0-0-0-6075

[8] See 8 CFR 245A.1(i), explicitly stating that "public cash assistance" "does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits."

[9] Georgetown Center for Children and Families, *Health Coverage for Lawfully Residing Children*, May 2018, https://ccf.georgetown.edu/wp-content/uploads/2018/05/ichia_fact_sheet.pdf

charge due to their Medicaid enrollment. Additionally, being under the age of 18 will now be considered a negatively weighed factor in the public charge test.[10] Therefore, children are now at an increased risk of being determined a public charge both due to their age as well as their enrollment in public benefits such as Medicaid. Lastly, to the extent that a parent's immigration status or ability to access needed services is jeopardized by the rule, so too will health care access and social services for their children. A child's well-being is inseparable from their parents' and families' well-being.[11] Children thrive when their parents can access needed health care and other social services.[12] Conversely, when parents' struggle, the healthy development and wellbeing of their children can also suffer.[13]

The new income threshold that the rule proposes has no statutory basis

We strongly oppose the use of the new arbitrary and unreasonable income thresholds that the rule proposes as they have no statutory basis and therefore once again, violate Congressional intent. The Immigration and Nationality Act only refers to the income threshold for sponsors who are required to submit an affidavit of support, not to the immigrant subject to the public charge determination, and the Department provides no justification for why this threshold is appropriate. Even less justification is offered for the 250 percent of FPL threshold. Setting these standards goes well beyond reasonable interpretation of the law and is, in fact, an attempt to achieve a change to the U.S. immigration policy that the Administration has sought by regulation, but that would legally require Congressional action.[14] A standard of 250 percent of the FPL is nearly $63,000 a year for a family of four -- more than the median household income in the U.S.[15] Therefore, this proposed change in the rule is an abuse of the agency's discretion to promulgate regulations that implement the legislative intent of Congress.

The proposed rule will have a negative impact on the economy

The proposed rule will likely have a chilling effect in which individuals applying for a green card or change in visa status will no longer apply for many of the benefits they may be eligible to receive. As a result, many individuals may forego needed health care services or social services that can help them lead healthy, productive lives, which will, in turn, have a negative impact on the economy. Alternatively, individuals who are now more likely to be deemed a "public charge" as a result of the rule changes may have the immigration statuses they seek, such as student visas, employment visas or green cards, denied, resulting in additional negative impacts on the economy. Recent studies have shown that immigration has an overall positive impact on long-term economic growth in the United States.[16] Specifically, one report found that immigrants were the most likely candidates for generating net labor force growth,[17] and that immigrants contributed disproportionately to cutting-edge science fields and activities. For example, 60%

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[10] Notice of Proposed Rulemaking, *Inadmissibility on Public Charge Grounds*, October 10, 2018, Federal Register page 51180, https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf

[11] Samantha Artiga, Anthony Damico, *Nearly 20 Million Children Live in Immigrant Families that Could be Affected by Evolving Immigration Policies*, Kaiser Family Foundation, April 18, 2018, https://www.kff.org/disparities-policy/issue-brief/nearly-20-million-children-live-in-immigrant-families-that-could-be-affected-by-evolving-immigration-policies/

[12] Julie L. Hudson and Asako S. Moriya, *Medicaid Expansion for Adults Had Measurable 'Welcome Mat' Effects on Their Children*, Health Affairs, September 2017, https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2017.0347

[13] Children's Health Watch, *Affordable Health Care Keeps Children and Families Healthy, June 2018*, http://childrenshealthwatch.org/wp-content/uploads/CHW-Affordable-Care-Brief.pdf

[14] See S.354 (115th Congress), RAISE Act, https://www.congress.gov/bill/115th-congress/senate-bill/354 and Statement of President Donald J. Trump on August 2, 2017; https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-backs-raise-act/

[15] The U.S. Census Bureau, *Income and Poverty in the United States: 2017*, September 12, 2018, https://www.census.gov/library/publications/2018/demo/p60-263.html

[16] The National Academies of Sciences, Engineering and Medicine, *The Economic and Fiscal Consequences of Immigration*, 2017, http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=23550

[17] See footnote 16 at page 25

of foreign graduate students were enrolled in STEM (science, technology, engineering and mathematics) fields as of 2010, and from 1995-2005, roughly one-quarter of all high-tech startups included at least one immigrant founder.[18] Additionally, immigrants have also played a key role in small-scale retailing, which can help to revitalize urban and some rural areas, as well as in expanding nascent business sectors such by lowering the cost of goods and services.[19] A 2012 study also found that immigrants have entrepreneurial rates above those of native-born populations.[20] Therefore, to the extent these individuals are denied visas or discouraged from applying for or changing their visa, the United States economy will suffer.

The proposed rule will increase costs for the states and localities responsible for implementing the rule

By proposing to change the public charge rule in such a drastic way, states and localities will see an increase in implementation costs from upgrading or developing IT systems to better comport with the new federal systems in place. In addition, they may see increased costs from having to update or develop systems to track public benefit use and better share that information with the Department, as well as potentially needing to hire additional personnel to track and share this information. States, along with health care and social service providers, may experience other indirect costs such as an increase in uncompensated health care costs from overutilization of the emergency department. Additionally, they may see increased costs for social services such as emergency food banks, shelters and other safety net resources as individuals may decide to not apply for the public benefits they are eligible to receive. Lastly, the amount of their budget that states would need to dedicate to cover these costs would limit their ability to cover other needed public services, such as public education.

The proposed rule will adversely affect health care providers and stakeholders

The text of the draft rule explicitly states that the rule "might result in reduced revenues for healthcare providers participating in Medicaid, pharmacies that provide prescriptions to participants in the Medicare Part D Low Income Subsidy (LIS) program [and] companies that manufacture medical supplies or pharmaceuticals."[21] It also states, "the primary sources of the consequences and indirect impacts of the proposed rule would be costs to various entities that the rule does not directly regulate, such as hospital systems."[22] Since the new public charge test may discourage individuals from applying for public health insurance programs such as Medicaid and Medicare, hospitals[23], in addition to states, may see a rise in uninsured patients, which will in turn cause an increase in their uncompensated care costs. The rule also acknowledges[24] that the new test may result in adverse health effects and additional medical costs due to delayed health care treatment, burdens which hospitals are likely to bear.

The proposed rule will adversely affect access to needed health services, such as substance use disorder services

By forcing individuals to choose between applying for the immigration status they are eligible for and accessing vital public benefits programs, the proposed rule will discourage individuals from accessing critical health services, such as substance use disorder (SUD) treatment services. Specifically, by including most forms of Medicaid as a type of public benefit considered in the public charge determination test, the proposed rule will discourage individuals from applying for and enrolling in

[18] See footnote 16 at page 26
[19] See footnote 16 at page 26
[20] National Science Foundation's National Center for Science and Engineering Statistics, *Science and Engineering Indicators*, 2012, https://wayback.archive-it.org/5902/20160208163359/http://www.nsf.gov/statistics/seind12/
[21] See footnote 10 at page 51118
[22] See footnote 10 at page 51260
[23] Mitchell H. Katz, MD; Dave A. Chokshi, MD, MSc; *The "Public Charge" Proposal and Public Health Implications for Patients and Clinicians*, JAMA, October 1, 2018 https://jamanetwork.com/journals/jama/fullarticle/2705813
[24] See footnote 10 at 51236

Medicaid, which is the largest payer of behavioral health services (including SUD and mental health services).[25] In 2017, there were more than 70,000 deaths nationally from drug use overdoses.[26] Without access to the necessary treatment services, we can expect this number to increase.

Additionally, by discouraging enrollment in Medicaid, individuals will no longer be able to receive services for the many benefit categories Medicaid covers, including preventive care, maternity care, prescription drugs, and in many states, oral health care services for both children and adults.[27] Preventing individuals from accessing these critical types of services will cause their health conditions to worsen. Additionally, denying individuals the ability to access oral health services will affect their ability to sleep, study and work, along with adversely affecting their nutrition, diet and emotional wellbeing.[28] Overall, the proposed rule will worsen individual health and significantly contribute to creating a less productive and prosperous society.

The proposed rule should not include the Children's Health Insurance Program

The Department would be exceeding its regulatory authority and abusing its discretion if it were to include the Children's Health Insurance Program (CHIP) in the list of public benefits considered in the public charge test. As mentioned above, Congress explicitly intended lawfully present immigrant children to access CHIP without needing to wait 5 years. Therefore, by discouraging enrollment in this program, the Department will only violate Congressional intent. Additionally, by worsening the overall health and wellbeing of immigrant children as a result of discouraging enrollment in CHIP, the Department will negatively impact the economy, as the children of immigrants are among the strongest economic and fiscal contributors in the U.S. population, contributing more in taxes than either their parents or the rest of the native-born population.[29]

Overall, we strongly urge the Department to immediately withdraw its current proposal and dedicate its efforts to advancing and strengthening policies that support immigrant children and families in achieving better overall health, wellbeing and economic prosperity.

Sincerely,

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[25] Medicaid and CHIP Payment and Access Commission; *Behavioral Health in Medicaid Program—People, Use and Expenditures*, 2015, https://www.macpac.gov/wp-content/uploads/2015/06/Behavioral-Health-in-the-Medicaid-Program%E2%80%94People-Use-and-Expenditures.pdf
[26] National Institute on Drug Abuse, *Overdose Death Rates*, August 2018, https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates
[27] Center for Health Care Strategies, *Medicaid Adult Dental Benefits: An Overview*, July 2018, https://www.chcs.org/resource/medicaid-adult-dental-benefits-overview/
[28] U.S. Department of Health and Human Services; National Institute of Dental and Craniofacial Research, National Institutes of Health, *Oral Health in America: A Report of the Surgeon General*, 2000, https://profiles.nlm.nih.gov/ps/access/NNBBJT.pdf
[29] See footnote 16.