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# United States Senate

COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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

Re: DHS Docket No. USCIS-2010-0012

Dear Ms. Deshommes:

I write to express my firm opposition to the U.S. Department of Homeland Security's (DHS) Notice of Proposed Rulemaking under 212(a)(4) of the Immigration and Nationality Act, DHS Docket No. USCIS-2010-0012 and urge DHS to withdraw the proposed regulation. During consideration of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Congress carefully considered the issue of access to public benefits in relation to our immigration laws—and rejected an approach similar to what DHS is now proposing.<sup>1</sup> I am deeply concerned this proposed rule is an attempt to circumvent the will of Congress and, should it go into effect, will harm public health and well-being.

Since DHS published the proposed rule, I have heard from teachers, social workers, and others who provide important services about immigrants who are turning down all public assistance out of a fear of possible reprisal—even when they are clearly eligible and in great need of this assistance. For example, a teacher from my home state told my staff about a student's parent withdrawing their children from health care and turning down Supplemental Nutrition Assistance Program (SNAP) benefits for fear of a coming rule that would penalize legal permanent residents and their children for using public benefits. News reports from my home state and around the country confirm this fear-driven withdrawal from SNAP and health insurance is widespread.<sup>2</sup>

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<sup>1</sup> Pub. L. No. 104-208, 110 Stat. 3009

<sup>2</sup> Nina Shapiro, *As Trump considers penalties, Seattle-area immigrants turn down public benefits they're entitled to claim*, Seattle Times (Aug. 18, 2018), <https://www.seattletimes.com/seattle-news/legal-immigrants-in-seattle-area-alarmed-over-possible-penalties-for-using-benefits/>; Helena Bottemiller Evich, *Immigrant families appear to be dropping out of food stamps*, Politico (Nov. 14, 2018), <https://www.politico.com/story/2018/11/14/immigrant-families-dropping-out-food-stamps-966256>; Megan Messerly, *Trump administration rule on public benefits having 'chilling effect' on immigrant health insurance enrollment*, The Nevada Independent (Nov. 16, 2018), <https://thenevadaindependent.com/article/trump-administration-rule-on-public-benefits-having-chilling-effect-on-immigrant-health-insurance-enrollment>; Lisa Schencker, *Illinois doctors say Trump immigration proposal already scaring away patients*, Chicago Tribune (Dec. 2, 2018), <https://www.chicagotribune.com/business/ct-biz-immigration-proposal-scaring-people-from-medicaid-1202-story.html>.

Similarly, many educators have witnessed declining enrollment in school meals programs, as well as in afterschool and summer programs designed to support immigrant students, due to families' fears of repercussions for using these important resources.<sup>3</sup> As explained below, proceeding with the proposed rule would harm the health, safety, and well-being of children and their families.

As written, this proposed rule would require immigration officers to consider an individual's use of broadly defined public benefits when evaluating an application to enter the United States or for adjustment of status. This is a stark departure from decades of precedent. Over the past year, multiple reports have demonstrated the detrimental effects this calculation has on the health of parents and their children, as many families have turned down critical services over the past year due to the rumors of a public charge proposal.<sup>4</sup> Research indicates that the long-term health of children is inextricably linked to the health of their parents.<sup>5</sup> One in four children in the U.S., equating to roughly 18.4 million children, lives in an immigrant family, and about 86 percent of those children are U.S. citizens.<sup>6</sup> Research on the effect of previous welfare reform efforts shows a chilling effect on immigrant families' participation in public programs.<sup>7</sup> These findings suggest the proposed rule will lead to declines in enrollment in Medicaid and Children's Health Insurance Program (CHIP) among U.S. citizen children with non-citizen parents, which would have a devastating impact on U.S. citizen children with non-citizen parents. Even the preamble to the proposed rule acknowledges this policy may lead to disenrollment or the decision to forgo enrollment among noncitizens and U.S. citizens alike from programs these families are clearly eligible to receive. This is yet another policy authored by the Trump administration that could force immigrants and their families back into the shadows.

According to the American Academy of Pediatrics (AAP), children who receive essential health care services through programs such as CHIP and Medicaid are more likely to have better health

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<sup>3</sup> Wendy Cervantes, Rebecca Ullrich, and Hannah Matthews, *Our Children's Fear Immigration Policy's Effects on Young Children*, CLASP (Mar. 1, 2018),

[https://www.clasp.org/sites/default/files/publications/2018/03/2018\\_ourchildrensfears.pdf](https://www.clasp.org/sites/default/files/publications/2018/03/2018_ourchildrensfears.pdf).

<sup>4</sup> Nina Shapiro, *As Trump considers penalties, Seattle-area immigrants turn down public benefits they're entitled to claim*, Seattle Times (Aug. 18, 2018), <https://www.seattletimes.com/seattle-news/legal-immigrants-in-seattle-area-alarmed-over-possible-penalties-for-using-benefits/>; Helena Bottemiller Evich, *Immigrant families appear to be dropping out of food stamps*, Politico (Nov. 14, 2018)

<sup>5</sup> *Parental Behavior and Child Health*, Health Affairs (Mar./Apr. 2002), <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.21.2.164>.

<sup>6</sup> Kaiser Family Foundation analysis of the March 2017 Current Population Survey, Annual Social and Economic Supplement. [https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/#endnote\\_link\\_274689-4](https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/#endnote_link_274689-4); *Immigrant Child Health Toolkit*, American Academy of Pediatrics, <https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/Immigrant-Child-Health-Toolkit/Pages/Key-Facts.aspx>

<sup>7</sup> Neeraj Kaushal and Robert Kaestner, "Welfare Reform and Health Insurance of Immigrants," Health Services Research, 40(3), (June 2005), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/>; Michael Fix and Jeffrey Passel, "Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform 1994-97"

(Washington, DC: The Urban Institute, March 1,

1999) <https://www.urban.org/sites/default/files/publication/69781/408086-Trends-in-Noncitizens-and-Citizens-Use-of-Public-Benefits-Following-Welfare-Reform.pdf>; Namratha R. Kandula, et. al, "The Unintended Impact of Welfare Reform on the Medicaid Enrollment of Eligible Immigrants," Health Services Research, 39(5), (October 2004), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361081/>;

Rachel Benson Gold, "Immigrants and Medicaid After Welfare Reform," (Washington, DC: The Guttmacher Institute, May 1, 2003), <https://www.guttmacher.org/gpr/2003/05/immigrants-and-medicaid-after-welfare-reform>.

and education outcomes later in life, as compared to children who go without these essential services.<sup>8</sup> Research demonstrates that public benefits programs such as SNAP, the nation’s most effective anti-hunger program, have drastically improved health outcomes and lowered health care costs for children.<sup>9</sup> As the primary source of nutrition assistance for many low-income families, in 2017, SNAP provided a nutritious diet to millions of low-income people.<sup>10</sup> Although it provides a modest benefit of just \$1.40 per person per meal on average, it forms a critical foundation for the health and well-being of many low-income individuals.<sup>11</sup>

The proposed rule could deter lawful immigrants and their citizen family members from using Medicaid and CHIP benefits they are eligible to receive, worsening health outcomes and increasing health disparities. A recent analysis shows that under the proposed “public charge” rule, an estimated 4.4 million immigrants and 8.8 million citizens who have an immigrant family member eligible for and enrolled in Medicaid and CHIP could stop using these critical health care programs.<sup>12</sup> Such a response would not only harm individuals, families, and public health—it would undermine efforts to lower health care costs nationwide and could have significant repercussions for the hospitals that provide services to this population. The proposed rule could result in an increase in uncompensated care costs, as people forgo preventive and routine care, but continue to use hospitals for expensive acute care and inpatient procedures.<sup>13</sup> When care costs go uncompensated, hospitals must still cover them, leading to more debt, and in the long-term, widening financial implications for the accessibility of their services.

I am also concerned the chilling effect the proposed rule would create could extend to the use of crucial public health services that help prevent and contain communicable diseases, threatening not only the health of immigrants but the health of all people in the United States. While DHS states the public charge test would continue to exempt any “[p]ublic health assistance [...] for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease,” I am concerned, the use of these services would decline given the fear and confusion this rule would create.

Additionally, I am greatly concerned by the proposed rule’s requirement for immigration officers to make a determination as to whether an individual is a public charge now or will ever become one in the future. Not only is this assessment highly speculative, but it threatens an individual’s civil rights. Such a determination could disproportionately impact people with disabilities, older

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<sup>8</sup> *AAP Opposes Dangerous Public Charge Proposal*, American Academy of Pediatrics (Sep. 23, 2018), <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/AAP-Opposes-Dangerous-Public-Charge-Proposal.aspx>

<sup>9</sup> Hilary Hoynes, Diane Whitmore Schanzenbach and Douglas Almond, Long-Run Impacts of Childhood Access to the Safety Net, *American Economic Review* *American Economic Review* 2016, 106(4): 903–934, <http://dx.doi.org/10.1257/aer.20130375>.

<sup>10</sup> Steven Carlson and Brynne Keith-Jennings, *SNAP Is Linked with Improved Nutritional Outcomes and Lower Health Care Costs*, Center on Budget and Policy Priorities (Jan. 17, 2018), <https://www.cbpp.org/research/food-assistance/snap-is-linked-with-improved-nutritional-outcomes-and-lower-health-care>

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

<sup>12</sup> Cindy Mann, April Grady, and Allison Orris, *Medicaid Payments at Risk for Hospitals Under the Public Charge Proposed Rule*, Manatt Health (Nov. 2018), <https://www.manatt.com/Insights/White-Papers/2018/Medicaid-Payments-at-Risk-for-Hospitals-Under-Publ>

<sup>13</sup> *Id.* at 9.

adults, those with limited English proficiency, and lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals. The proposed “public charge” rule clearly undermines the foundational principles of equity and inclusion that must be the basis for our government’s policy, including with respect to immigration.

A policy such as the proposed “public charge” rule will have ripple effects far beyond what current research has been able to measure. What we know, however, is already deeply alarming. For instance, DHS itself predicts worse health outcomes, including increases in obesity and malnutrition for pregnant or breastfeeding women, infants, or children.<sup>14</sup> DHS also indicates it expects high-cost emergency room and emergent care services will likely increase as a method of primary health care utilization due to delayed and missing health treatments, as will instances of treatment or services not paid for by an insurer or a patient and left to be covered by the hospitals.<sup>15</sup>

This deeply misguided policy will not ensure “self-sufficiency” among immigrants, nor will it help hospitals, which will see a further rise in costs and frequency of emergency care that will result from the drop in use and accessibility of preventive services. In addition, this policy will have a significant impact on programs not implicated in the text of proposed rule. Immigrant families are likely to refuse services for which they are eligible out of fear of possible reprisal for using these services—leading to numerous adverse consequences for children and families’ educational outcomes, health, and general well-being. This policy will have a detrimental effect on the children of lawful immigrants and their future generations, further hindering their paths to success.

With this in mind, I urge you to immediately reverse course on this policy and withdraw the proposed rule.

Sincerely,



Patty Murray  
Ranking Member  
Senate Committee on Health,  
Education, Labor, and Pensions

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<sup>14</sup> *Notice of Proposed Rulemaking: Inadmissibility on Public Charge Grounds*, Department of Homeland Security (Oct. 10, 2018), <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>

<sup>15</sup> *Id.*