

Submitted on December 4, 2018 via www.regulations.gov

US Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

RE: Comments on Proposed Regulation — Inadmissibility on Public Charge Grounds (DHS Docket No. USCIS-2010-0012)

On behalf of Insure the Uninsured Project (ITUP), we would like to express our deep concern with the Department of Homeland Security’s (DHS) Notice of Proposed Rulemaking (proposed rule) on “public charge,” published in the Federal Register on October 10, 2018. The proposed rule represents a dramatic shift in immigration policy and could prevent many immigrants from reuniting with their families in the U.S.

About Insure the Uninsured Project

ITUP is a nonpartisan, independent 501(c)(3) nonprofit organization and health policy institute that for more than two decades has offered expert analysis and facilitated convenings of California health leaders on health and health policy issues affecting California. ITUP seeks a health care system that is available to all Californians and where Californians can expect fair access and treatment regardless of age, health status, income, language, race or ethnicity, gender, immigration status, geographic region, public or private coverage.

ITUP is deeply concerned with the impact of many provisions in the proposed rule including the addition of an income test that could negatively impact lower income individuals; however, ITUP focuses on health policy, these comments address the proposed rule’s health care provisions.

Brief Summary of the Public Health Care Program Provisions in the Proposed Rule

Under federal law, an individual seeking admission to the U.S., or seeking to become a permanent resident (obtain a green card), is “inadmissible” if the individual at the time of application for admission or adjustment of status, is found to be likely at any time to become a

“public charge” which includes, among other factors, whether they are likely to rely on public benefits for subsistence in the U.S.

Under current federal guidance, immigration officers consider past use of two public benefits in a public charge determination:

1. Receipt of public cash assistance for income maintenance; or
2. Institutionalization for long-term care at government expense.¹

Immigration officials must also consider all other circumstances, not just the use of these two public benefits, in determining whether an individual may become a public charge.

The proposed rule adds to the list of public benefits that must be considered in a public charge determination

- *Non-emergency Medicaid; and*
- *Medicare Part D Premium and Cost Sharing Subsidies.*

Under the proposed rule, an immigrant’s reliance on the programs proposed for addition must meet specific thresholds to impact a public charge determination.

Comments on the Proposed Rule on Public Charge

ITUP is deeply concerned with the addition of public health care programs to the list of benefits that must be considered in a public charge determination. The addition of non-emergency Medicaid and Medicare Part D Premium and Cost Sharing Subsidies to this list is unreasonable and will adversely impact access to care.

The proposed rule primarily impacts undocumented immigrants applying for lawful residency status through the sponsorship of family members. Immigrants subject to public charge determinations are generally ineligible to receive the additional health benefits included in the proposed rule. Most undocumented immigrants are ineligible for federally-funded Medicaid services, except for emergency Medicaid services, which are specifically exempted in the proposed rule. Similarly, unauthorized immigrants subject to public charge determinations are not eligible for Medicare Part D. Adding public health care programs that most immigrants subject to a public charge determination are ineligible to receive is misleading and potentially damaging.

Although undocumented immigrants are not eligible for the proposed additional public health care programs, and should therefore not be directly affected by that aspect of the proposed rule, the complexity of the proposal will likely cause confusion and fear among immigrant Medicaid and Medicare beneficiaries. Previous leaked draft public charge rules included enrollment in Medicaid as an unfavorable factor in public charge determinations. Based simply on the leaked documents, health care stakeholders throughout California reported that many

immigrants requested disenrollment for themselves or their children from Medi-Cal (California's Medicaid program) because of concerns about public charge. ITUP published a summary of stakeholder feedback in January 2018, highlighting that although no change in policy had occurred, health care access was adversely impacted because of fear, confusion and a chilling effect on immigrant access.²

Implemented in 1966, Medi-Cal provides comprehensive health care benefits for low-income Californians including adults, children, pregnant women, infants, seniors, persons with disabilities, children in foster care, and former foster youth up to age 26. Acknowledging the value of comprehensive coverage, California uses state-only funds to cover populations not eligible for comprehensive Medi-Cal coverage, such as legal permanent residents subject to a five-year waiting period for federal Medicaid eligibility and low-income undocumented children up to age 19. The UCLA Center for Health Policy Research, in collaboration with the UC Berkeley Labor Center, conservatively estimate that between 317,000 and 741,000 Medi-Cal eligible Californians will disenroll from the Medi-Cal program because of fear, confusion, and misinformation regarding the proposed changes to public charge rules.³ UCLA and UC Berkeley researchers also quantified the economic ripple effect of Medi-Cal disenrollments, including the loss of between \$500 million to \$1.1 billion in Medi-Cal funding for the state, and the loss of 13,200 jobs, primarily in the health care sector.⁴

Even though the actual proposed rule will not directly impact most eligible beneficiaries, in California, and likely every state in the nation, the confusion the rule is likely to create could lead eligible individuals to disenroll from state Medicaid programs with significant economic ripple effects. We strongly urge DHS to reconsider the addition of public health care programs in the proposed rule because of the potential harm that will result.

ITUP is deeply concerned with the addition of public health care programs to the list of benefits that must be considered in a public charge determination because, if implemented, this change will increase the number of uninsured Californians.

California fully embraced the federal Affordable Care Act (ACA) with dramatic results. According to National Health Interview Survey data, California's uninsured rate is currently at just 7 percent overall and 8.1 percent among those under 65 years old.⁵ In the years prior to the ACA, California's uninsured rate hovered between 16 and 19 percent.⁶

As discussed previously, the addition of the proposed public health care programs to the list of benefits considered in a public charge determination will result in many Californians disenrolling from Medi-Cal. Most will become uninsured, reversing California's positive trend in reducing the state uninsured rate. The rate of uninsured in California could increase by as much as two percentage points if the proposed rule, as written, is implemented.

ITUP is deeply concerned with the addition of public health care programs to the list of benefits that must be considered in a public charge determination because appropriate implementation of the proposed changes to public charge policy will be extremely difficult. To appropriately implement these additions in the proposed rule, frontline DHS officials need expertise in both immigration laws and the intersection with public program eligibility at the federal and individual state level.

To appropriately consider the additional public health care programs outlined in the proposed rule in a public charge determination, a DHS officer needs a comprehensive understanding of the federal immigrant eligibility requirements for Medicaid and Medicare programs, as well as a comprehensive understanding of the intersection of state eligibility for public programs and immigration laws.

To use Medicaid as an example of this complexity, in many states, immigrants, including unauthorized immigrants, are eligible for state-only funded Medicaid programs, as well as emergency Medicaid. As outlined in the proposed rule, enrollment in state-only and emergency Medicaid is **not** considered in a public charge determination. When evaluating prior use of Medicaid in the totality of an individual's circumstances for a public charge determination, a DHS official will need to make the complicated distinction to determine whether the Medicaid service or program used is included or excluded from public charge considerations under the rule.

The level of understanding necessary to appropriately identify when Medicaid use should be considered part of a public charge determination, as proposed in the rule, requires legal expertise that cannot be expected of DHS frontline staff. Given this high level of complexity, errors in the application of this policy change are likely. Because appropriate implementation of the proposed policy changes impacting public health care programs will be extremely difficult, we urge DHS to reconsider these proposed changes.

ITUP urges DHS not to include prior enrollment in the Children's Health Insurance Program (CHIP) in public charge determinations because the inclusion of CHIP raises the same concerns as those discussed above. ITUP also urges DHS not to make use of any public health care programs a factor in a child's public charge determination because past use of these programs by a child is not a predictor of future dependence on the government for subsistence as an adult.

The proposed rule invites comments on whether CHIP should be added to the list of public health care programs considered in a public charge determination. The proposed rule also requests comments on whether and to what extent past or current receipt of benefits should be weighed in a child's public charge determination.

As indicated by the name of the CHIP program, most beneficiaries are children and to access CHIP, children need to be U.S. citizens or legal permanent residents not subject to the federal five-year waiting period to enroll. As discussed above, most immigrants subject to a public charge determination are undocumented immigrants sponsored by family members. Adding CHIP to the list of public health care programs considered in a public charge determination will result in unreasonable harm for all the same reasons discussed above.

Promoting access to public health and nutrition programs positively impacts children’s health, and ultimately improves their future economic well-being.⁷ Recognizing the importance of comprehensive health care coverage for children, in 2016 California expanded comprehensive Medi-Cal coverage to low-income undocumented children regardless of immigration status. Because the premise of public charge determinations is to evaluate, based on the totality of an individual’s circumstances, whether they are likely in the future to become a public charge, any evaluation of a child should focus heavily on the child’s potential to flourish and grow. Access to public health care programs improves this potential. ITUP strongly urges DHS not to include a child’s prior use of public health care programs as a factor in a public charge determination.

Our review of the health care provisions in the proposed rule reveal that the new rule would actually apply to only a small number of individuals but the resulting confusion and complexity in implementing the rule will create barriers to appropriate implementation and a high likelihood of errors, and most importantly, discourage lawful enrollment of immigrants in essential services. The result of including these public programs in public charge determinations will be unjustifiable harm to millions.

We urge DHS to reconsider and withdraw the proposed regulatory changes.

Sincerely,

Deborah R. Kelch

Deborah R. Kelch
Executive Director
Insure the Uninsured Project

Elia V. Gallardo

Elia V. Gallardo
Director of Policy Research
Insure the Uninsured Project

¹ 64 Federal Register 28689, (May 26, 1999)

² Vanessa Trujillo and Elia Gallardo, “[Notes from the Field: Immigrant Communities in California Under the Cloud of Immigration Enforcement](#),” Insure the Uninsured Project, January 2018.

³ Ninez Ponce, Laurel Lucia and Tia Shimada, “[How the Proposed Changes to the ‘Public Charge’ Rule Will Affect Health, Hunger and the Economy in California](#),” UCLA Center for Health Policy Research, updated November 29, 2018.

⁴ Ponce, Lucia and Shimada, “How the Proposed Changes to the ‘Public Charge’ Rule Will Affect Health, Hunger and the Economy in California.”

⁵ Michael E. Martinez, Emily P. Zammiti, and Robin A. Cohen, "[Health Insurance Coverage: Early Release of Estimates From the National Health Interview Survey, January – September 2017](#)," National Center for Health Statistics, February 2018.

⁶ National Health Interview Survey, "[Early Release Reports on Detailed Estimates of Health Insurance Coverage](#)," Reports from 2007-2017.

⁷ Marianne Page, "[Safety Net Programs Have Long-term Benefits for Children in Poor Households](#)," Center for Policy Research, University of California at Davis, March 2017.