December 7, 2018

Samantha Deshommes, Chief, USCIS, DHS
20 Massachusetts Avenue NW
Washington, DC 20529-2140

RE: ABC for Health, Inc. Public Comment on DHS Docket No. USCIS-2010-0012, "Inadmissibility on Public Charge Grounds."

Dear Ms. Deshommes–

Thank you for the opportunity to provide comment on the Department of Homeland Security's Proposed Rule on "Inadmissibility on Public Charge Grounds." Advocacy and Benefits Counseling for Health, Inc. (ABC for Health) helps low-income, health disparity populations obtain access to both health care and coverage in Wisconsin. ABC for Health's mission is to provide consumers and providers with information, advocacy tools, legal services, and expert support they need to secure health care coverage and services. We translate individual client case experiences into local strategies as well as system level reforms through our statewide HealthWatch Wisconsin subsidiary, which serves as a catalyst in the development of local HealthWatch Coalitions to promote community efforts and community voices directed at health care coverage and access concerns for children and families.

In your proposed rule, you envision expanding the federal government's ability to deny visas or residency to immigrants who benefit from non-cash assistance, including Medicaid, Medicare Part D, Food Assistance, and Housing Assistance. A complicated formula evaluates the type and duration of benefit use, and assesses "heavily weighed negative factors" for use of public benefits. The proposed, new definition of public charge requires a broad evaluation of an immigrant's history and "economic prospects," and gives wide discretion to USCIS officers to reject an immigrant's application for admission/Legal Permanent Resident Status, including those on temporary visas who seek to stay permanently. USCIS officers can evaluate if the immigrant makes enough money to support a family or has resource to provide health care for a preexisting condition.

We have concerns over your proposed rule that fall into three main categories: worsened health and health outcomes, especially for children and vulnerable newborns; increased uncompensated care and socialized debt to millions of health care consumers; and devastating discrimination based on race and health status.

**The Public Charge Proposed Rule, if implemented, will worsened health, especially for children and vulnerable newborns.**

The proposed rule will worsen the health and wellbeing of individuals legally present in the United States, including newborns – born as US Citizen whether or not their mothers are legally present.

As you acknowledged, the proposed rule would force legal immigrants and those applying for immigration visas or legal permanent residency to either: Stop participating in public benefits program or risk being deemed a "public charge" ineligible for legal resident status. The consequences are dire, both directly and indirectly.[1]

The Kaiser Family Foundation reported that the proposed rule would likely increase confusion and fear among all legal immigrant families about using public programs for themselves and their children, regardless of whether they are directly affected by the policy changes.[2] In a policy brief, Kaiser's research shows that, "if the policy leads to disenrollment rates from 15% to 35%, an estimated 875,000 to 2 million citizen children with a noncitizen parent could drop Medicaid/CHIP coverage despite remaining eligible.[3]"

The Department's own language acknowledges both the direct, legal entitlement to these programs and the explicit responsibility of the government to provide these services. Under previous policy clarified in 1999, the federal government specified that it would **not** consider use of Medicaid, the Children's Health Insurance Program (CHIP), or other non-cash benefits in public charge determinations.[4] The guidance clarification was necessary because ongoing confusion about public charge policies "deterred eligible aliens and their families, *including U.S. citizen children*, from seeking important health and nutrition benefits that they are legally entitled to receive."[5]

The stark impact of this is no more poignant than is the case of a newborn. Consider a newborn, born a US Citizen to qualified or non-qualified immigrant parents. Americans have long supported bi-partisan protections to make sure newborns have a healthy start regardless of the status of a parent.

---

[1] Available at, https://www.federalregister.gov/d/2018-21106/p-1801, saying, "There are a number of consequences that could occur because of follow-on effects of the reduction in transfer payments identified in the proposed rule. DHS is providing a listing of the primary non-monetized potential consequences of the proposed rule below. Disenrollment or foregoing enrollment in public benefits program by aliens otherwise eligible for these programs could lead to:

- Worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence;
- Increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment;
- Increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated;
- Increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient; and
- Increased rates of poverty and housing instability; and
- Reduced productivity and educational attainment."

[2] Available at: https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/

[3] Available at: https://www.kff.org/disparities-policy/issue-brief/potential-effects-of-public-charge-changes-on-health-coverage-for-citizen-children/

[4] "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds," Immigration and Naturalization Service, Justice, 64 Fed. Reg. 28689-28693 (March 26, 1999), https://www.gpo.gov/fdsys/pkg/FR-1999-05-26/pdf/99-13202.pdf.

[5] *Infra*, note 2. Emphasis added.

Prenatal care and newborn coverage are a worthy investments, especially when those children grow up to be taxpaying US Citizens, actively part of the labor force.

The language of the proposed rule also poses concern for children and young adults receiving medically necessary services under the federal Early Period Screening Diagnosis and Treatment (EPSDT) program.[6] The EPSDT program is one of the few services that a state Medicaid program must cover under federal law, and extends to individuals meeting eligibility criteria, which includes many of the classes of immigrant directly identified in the proposed rule.

Medicaid's EPSDT health care coverage for children and youth extends to age 21. EPSDT provides comprehensive health care from preventive well-child visits to the compressive care needed to correct or ameliorate episodic illnesses and injuries and long-term chronic and disabling conditions. Agency rulemaking cannot cancel a federally mandated benefit, nor should DHS seek to make such a change. Federal law includes a deliberate focus on prevention and early intervention to reduce health problems among infants, children, and adolescents to offer them equal opportunity to succeed in life.

Creating direct or indirect barriers to health benefits has an adverse impact not just on the potential recipients, but also on public health and the general welfare. There is no reason founded on fact or data that warrants changing the public charge rules or guidance, only political ideology that runs counter to existing federal law.

**The Public Charge Proposed Rule, if implemented, will increase uncompensated care and socialize debt to millions of health care consumers.**

The proposed rule will increase the cost of health care and coverage for all users. The rule will increase the socialization and redistribution of medical debt to all people in the United States. Your own comments acknowledge these consequences.[7] The Department sought clarity on how to quantify the consequences. We offer some numbers.

Uncompensated health care in Wisconsin hospitals is back over $1 billion.[8] In Wisconsin, bad debt and charity care dollars from hospitals alone was $1.14 billion in 2017, an increase of over $142 million over 2016. Nationally, uncompensated care for US Hospitals exceeds $38 billion.[9]

Barriers to health coverage create increased medical debt for patients and uncompensated care for providers. Wisconsin saw real progress in 2013-15, as access to coverage under the Affordable Care Act and a "mini-Medicaid Expansion" (albeit largely state-funded), provided new coverage for

---

[6] EPSDT is a mandatory Medicaid service for children and youth under age 21, as codified 42 U.S.C. §§ 1396a (a) (10) (A), 1396a (a) (43), 1396d (a) (4) (B), 1396d(r).
[7] *Infra*, note 1.
[8] Uncompensated Health Care Report–Wisconsin Hospitals, Fiscal Year 2017, available at https://www.whainfocenter.com/uploads/PDFs/Publications/Uncompensated/Uncompensated_2017.pdf
[9] American Hospital Association Uncompensated Care Fact Sheet, available at: https://www.aha.org/system/files/2018-01/2017-uncompensated-care-factsheet.pdf

people that dramatically reduced uncompensated care. Those trends reversed from 2015-17 due to policy decisions that segmented insurance markets, reduced enrollment numbers, and exacerbated health care costs.

As hospitals know, bad debt and charity care expenses hurt financial performance, customer relations, and cause real pocketbook pain for patients affected by health disparities.

In Wisconsin, nearly 1.2 million people rely on BadgerCare and Medicaid programs to provide essential, affordable, and effective health care services. Moreover, the impact of these programs reaches thousands more including health care providers large and small in every county of Wisconsin. The pool of BadgerCare and Medicaid recipients provides cost effective coverage that lowers the number of uninsured and keeps people out of expensive, inefficient, and often uncompensated emergency room care.

Most people realize that uncompensated care costs do not disappear but rather show up in the form of increased health care costs. Health care providers redistribute and socialize unpaid medical bills to small business, people with insurance, and other hospital patients.

Your proposed rule would increase the number of un- and underinsured, and force people into, at best, emergency room care. This affects the health care system, which in turn socializes uncompensated care, passing the costs onto all of us. As a nation, we should be focusing scarce resources on actively reducing uncompensated care by creating programs, policies, and innovations that promote seamless comprehensive care and coverage for all patients. The current system desperately needs strong consumer assistance and protections, not damaging policies that force even more individuals out of care and coverage.

**The Public Charge Proposed Rule, if implemented, would be blatantly discriminatory.**

Finally, the rule is blatantly discriminatory against different classes of individuals: most obviously against racial and ethnic minorities, and individuals with disabling conditions. The rule considers the mere existence of certain health conditions (mental health disorders, heart disease, and cancer) to be among the heavily weighed factors. An individual is "At high risk of becoming a public charge if he or she has a medical condition and is unable to show evidence of unsubsidized health insurance."

The language of the proposed rule raises dangerous concerns. Is this a rule meant to be a political spectacle in order to perpetuate an ideology? Are the problems of health: chronic diseases, cancers, mental, behavior, or substance abuse intentionally attributed solely to our lowest income, racial, or ethnic minorities? This only serves to capitalize on the hostilities of ideological audiences.[10] Selectively eliminating minority families from public benefits does nothing to address the underlying issues of chronic disease, opioid abuse, or other health conditions. It only exacerbates the harms of poor health beyond the individuals and into the broader community.

[10] William N. Elwood, Rhetoric in the War on Drugs: The Triumphs and Tragedies of Public Relations 34 (1994)

This rule promises to create an unconstitutional, disparate impact among demographic racial and ethnic groups. Many health conditions, chronic diseases, or behaviors vary among gender, culture, race, and ethnicity for various sociological reasons.[11] Similarly, volumes of research exists that shows that socioeconomic differences between races account for a substantial portion of the racial disparity in health outcomes.[12] We need look no further than our own data on infant mortality to prove this point.[13] In spite of significant advances in the diagnosis and treatment of most chronic diseases, there is evidence that racial and ethnic minorities continue to receive lower quality of care and experience greater morbidity and mortality from various chronic diseases.[14] That is a failure of our health care system and government, caused by systemic discrimination, racial bias, and stereotyping.

Finally, the rule as written misunderstands how individuals with disabling conditions receive comprehensive care. For one, the language of the rule uses a lack of "unsubsidized" insurance against someone. Consider, however, that many important community services for individuals with disabilities are *only* available through public insurance options like Medicaid. This puts individuals with disabilities at a double disadvantage – one for having a disabling condition, and second for accessing the only health coverage that will assist in their ability to be engaged in their communities.

The Department is reverting to archaic, stigmatizing language, equating the presence of a disabling health condition with the inability of an individual to fulfill achievement. In reality, adults and children with physical or mental health conditions absolutely lead full, productive, independent lives.

Was it the intent of DHS in this proposed rule to open debate the validity of the Americans with Disabilities Act? When passed in 1990, the ADA "refuted centuries of harmful stereotypes about the worth, contributions, and future potential of people with disabilities."[15] As the late President George H. W. Bush said from the White House lawn on July 26, 1990 upon the signing of the Americans with Disabilities Act, "Let the shameful wall of exclusion finally come tumbling down."[16]

This rule threatens the health care people with disabilities need to maintain their health, and live productive, independent lives in the community.

---

[11] See: "Tobacco-Related Disparities," available at: https://www.cdc.gov/tobacco/disparities/index.htm; CDC's "Health Disparities in Obesity" fact sheet, available at: https://www.cdc.gov/minorityhealth/chdir/2011/factsheets/obesity.pdf; and "Minority Health and Health Disparities," available at: https://www.niaaa.nih.gov/alcohol-health/special-populations-co-occurring-disorders/diversity-health-disparities.

[12] Egede L. E. (2006). Race, ethnicity, culture, and disparities in health care. *Journal of general internal medicine*, *21*(6), 667-9.

[13] https://www.wpr.org/wisconsins-infant-mortality-african-americans-highest-nation

[14] https://www.rwjf.org/en/library/research/2014/06/reducing-disparities-to-improve-care-for-racial-and-ethnic-minorities.html

[15] Statement by the Disability Rights Education & Defense Fund, available at: https://dredf.org/2018/10/10/trumps-public-charge-poor-disabled-immigrants-need-not-apply/

[16] Remarks of President George Bush at the Signing of the Americans with Disabilities Act, available at: https://www.eeoc.gov/eeoc/history/35th/videos/ada_signing_text.html

In summary, the direct and indirect consequences of this proposed rule raise to such a level as to not merit any further action. We call upon DHS to withdraw this proposal. The rule is chilling, with dire consequences for children most of all. We have learned from history how proposals based only on fear and discrimination have kept otherwise hardworking, taxpaying, lawfully present individuals from accessing the community supports, benefits, and health care they are legally entitled to. We speculate that perhaps that was your intent with this rule, to scare families from social supports either for political or short-term financial gain.

This is unacceptable, illegal, and indeed, in many respects, costly.

Sincerely,
**ABC for Health, Inc.**

Bobby Peterson
Executive Director/Public Interest Attorney
ABC for Health, Inc.
32 N. Bassett St.
Madison, WI 53703
bobbyp@safetyweb.org