NACHSA National Association of County Human Services Administrators

An Affiliate Organization of NACo ★ National Association of Counties

December 10, 2018

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 Ms. Deshommes:

On behalf of the National Association of County Human Services Administrators (NACHSA), I urge the Department of Homeland Security to rescind its proposed immigration rule expanding the factors used to determine public charge. The rule would add the receipt of non-cash assistance and other factors for immigration officials to consider when determining inadmissibility or denying a change or extension of immigration status.

NACHSA represents county directors of health and human services programs. Our administrators work with their county boards of elected officials to support individuals and families within their community who may need government support during a tough time economically and/or when they need health care they cannot afford. Our counties work in partnership with their states and the federal government to deliver a wide range of programs, including child welfare, income assistance, job training, nutrition, health care and much more.

Our administrators are closest to the individuals and families who participate in the programs described in the proposed rule. A number of them have already received reports of legal immigrant families deciding to forgo services or choosing not to apply for benefits for which they are eligible. The chilling effect of reduced program participation has already begun. Those decisions by legal immigrants may lead to worse health outcomes and increased economic insecurity for their family.

In fact, the proposed rule itself acknowledges this chilling effect. It states, "*There are a number of consequences that could occur … Worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence … and increased rates of poverty.*"

It further notes that the proposed rule "*has the potential to erode family stability and decrease disposable income of families and children because the action provides a strong disincentive for the receipt or use of public benefits by aliens, as well as their household members, including U.S. children."*

Current Public Charge Factors

Our administrators and the communities they serve are familiar with the public charge rules that have been in effect for decades. It is well understood that the finding of public charge is limited to the receipt of cash assistance -- Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), state or local General Assistance, or federal payments for long term institutional care.

Two laws enacted in 1996 addressed public charge. The *Illegal Immigration Reform and Immigrant Responsibility Act* (P.L. 104–208) codified the cash assistance test. The *Personal Responsibility and Work Opportunity Reconciliation Act of 1996* (P.L 104-193) barred for five years a legal immigrants' receipt of TANF, Medicaid and the Supplemental Nutrition Assistance Program (SNAP/Food Stamps). And, in 1999, the federal government issued additional policy guidance to confirm that the public charge test was based solely on the receipt of cash assistance demonstrating that the immigrant was "primarily dependent on the government for subsistence."

The Proposed Public Charge Tests

The proposed rule would add a number of non-cash benefits as public charge factors. Under the proposal, if a legal immigrant applies for, receives, or may potentially use federal non-cash benefits for which he or she may be eligible, such as Medicaid, SNAP or federally subsidized housing, among other benefits, extending or adjusting his/her immigration status may be jeopardized. Immigration officials would also be able to consider income, disability, English proficiency and age when determining the totality of the immigrant's circumstance.

The Chilling Effect

Some of our administrators are already receiving information that the mere issuance of the rule is spreading fear and confusion among some communities. Data and studies from the past changes in law described above confirm that those reactions are to be expected and are indeed real. Program participation by individuals and families with legal status does diminish.

During the changes in law of the 1990's, the U.S. Department of Agriculture (USDA) found that food stamp use fell by 53 percent between 1994 and 1998 among U.S. citizen-children who had a noncitizen parent. Similar decreases in participation were found in Medicaid, including a drop of 17 percent among noncitizens and 39 percent among refugees. There was an even greater reduction in participation in the TANF program of 44 percent and 78 percent, respectively.

The proposed changes will likely harm children the most. Nationwide, over 19 million or one in four (25%) children live in a family with an immigrant parent, and nearly nine in ten (86%) of these children are citizens.

Cost Shifts

Our counties and their community-based partners serve as the safety net for all of their residents when no other federal or state program is available. The chilling effect described above will ultimately increase our financial responsibility for services essential to the health and well-being of all persons.

We will bear the financial consequences of a legal immigrant's decision to withdraw or forego Medicaid coverage. Without accessing preventive health care services, larger future uncompensated care costs and poorer health outcomes will result.

The rule's chilling effect will directly affect the financial ability of our hospitals to provide health care to all patients. While the actual impact is uncertain, given the numerous variables in projecting individual behavior and the final rule, Manatt Health issued a report in November outlining the economic loss to hospitals. Manatt projects that the total amount of Medicaid and Children's Health Insurance Program (CHIP) spending subject to the chilling effect is $68 billion nationwide, based on data from 2016. Of that amount, hospital payments are estimated at $17 billion nationally, including $7 billion for noncitizen enrollees and $10 billion for enrollees who are family members of a noncitizen.

We support the continued exclusion of CHIP from the public charge list. A number of our states adopted the federal option enacted in 2009 to cover immigrant children and pregnant women with Medicaid and CHIP benefits during their first five years in the U.S. In county-administered states, it is often our agency workers who determine CHIP eligibility. Including the program in the public charge test would place financial stress on working families whose incomes exceed the Medicaid income guidelines but who qualify for CHIP and choose to dis-enroll or not apply for a non-cash benefit to help keep their children healthy. Increased county health delivery costs may result as a consequence of that decision.

NACHSA also opposes the proposal to include receipt of SNAP as a factor in determining public charge. The loss of access to SNAP would further exacerbate food insecurity. SNAP is a critical source of support for struggling households; a large body of research shows how SNAP lifts people out of poverty, reduces hunger and obesity, and improves school attendance, behavior, and achievement. According to the USDA, SNAP supports our local economies. Every $1 spent in SNAP benefits generates $1.73 throughout the economy. And, because SNAP benefits are so urgently needed by families, they are spent quickly with 97 percent of the benefits redeemed by the end of the month.

Administrative Complexities

The proposed rule would create new administrative burdens and complexity for county staff and the residents they assist. Those new burdens and mandates would include:

- *Documenting Self-Sufficiency:* Under the proposal, legal immigrants wishing to extend or revise their current legal status would have to complete *Form I-944 – Declaration of Self-Sufficiency*. Our county staff would be required to provide in the form of "a letter, notice, certification, or other agency documents" evidence for the legal immigrant which would demonstrate past applications or receipt of benefits, including the exact

amount of the benefit and when exactly it was received. This mandate would generate a huge workload for county staff and may require access to information that has been archived from legacy systems our county governments no longer access.

- *Multiple Application Processes and Undermining Eligibility:* Through 'presumptive eligibility', the vast majority of our counties streamline the application processes whenever possible to reduce administrative costs and the need for individuals and families to submit duplicate or similar information. This process allows counties to determine eligibility for other federal programs if the applicant qualifies for just one of them (e.g., Medicaid, TANF, SNAP).

  Because of this streamlined application process, legal immigrants' enrollment may be undermined in programs such as the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) program. Congress has expressly permitted in law that WIC presume any individual on Medicaid, SNAP, or TANF to be income-eligible for it, thus reducing the paperwork burden during WIC certification. In fact, in 2016, 74.9 percent of WIC participants were eligible due to eligibility for another program.

  While WIC is not on the public charge list, our counties may have to enhance administrative efforts to increase and conduct separate enrollment procedures for that program alone.

- Increased *"Churn" Among the Eligible Caseload:* As legal immigrants learn about the new rule, more families will terminate their participation in programs. However, if an immigrant's need for health, nutrition or other services becomes acute, they may re-apply. This on-again-off-again approach to enrolling in benefits not only jeopardizes an individual's health and well-being, it also unnecessarily duplicates the work and increases administrative costs for county governments.

For all of these reasons, the National Association of County Human Services Administrators strongly opposes adding any additional programs to the totality of circumstances test for legal immigrants and urges the Department to withdraw the proposed rule on public charge.

If you have any questions, please contact Tom Joseph, NACHSA's Washington Representative at tj@paragonlobbying.com or 202-898-1446.

Sincerely,

Cathy Senderling-McDonald
President
National Association of County Human Services Administrators