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Make the Road New York ☞ Medicare Rights Center ☞ Metro New York Health Care for All Campaign
New Yorkers for Accessible Health Coverage ☞ New York Immigration Coalition ☞ Project CHARGE
Public Policy and Education Fund of New York/Citizen Action of New York
Raising Women's Voices-New York ☞ Schuyler Center for Analysis and Advocacy ☞ Young Invincibles

VIA ELECTRONIC SUBMISSION

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RE: DHS Docket No. USCIS-2010-0012, RIN 1615-AA22, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds – **Request to Withdraw Proposed Rule**

Health Care for All New York (HCFANY) respectfully submits the following comments to the Department of Homeland Security (DHS) in response to the Notice of Proposed Rulemaking Posted on October 10, 2018. HCFANY is a statewide coalition of over 170 organizations dedicated to achieving quality, affordable health coverage for all New Yorkers. We strive to bring consumer voices to policy conversations, ensuring that real New Yorkers' concerns are heard and reflected. Our Steering Committee members have expertise in all aspects of health coverage, including groups focused on the needs of immigrants, children, young adults, the elderly, people with disabilities, women, and people who are self-employed.

Public charge determinations currently apply to people who are primarily dependent on public benefits. The proposed rule expands that to incorporate a prospective determination of the likelihood that a person will use any of the named public benefits in the future. The newly incorporated benefits include Medicaid, SNAP (food assistance), and housing assistance.

HCFANY recommends withdrawing the proposed rule in its entirety. The example DHS includes to explain the proposed policy illustrates its cruelty – a widowed 68-year-old woman with arthritis and heart disease who wants to spend her remaining years with her U.S. citizen child and grandchildren. Under the proposed rule, this grandmother would not be permitted to stay permanently in the United States. This is a radical, morally reprehensible policy change that harms the entire family, not just the individual immigrant targeted by the rule. In fact, DHS



assumes in its calculations that many of the people who would disenroll due to the rule would be people who are technically exempt.¹

This proposed rule directly interferes with our core mission of ensuring that all New Yorkers have access to affordable health care. It is already harming New Yorkers of all backgrounds and increasing financial pressure on New York’s health care providers. The proposed rule has no corresponding economic or public safety benefit, and DHS makes no meaningful effort to show that it does. The way that DHS defines the benefit of the rule is in reality a definition of the harm it will do: “the primary benefit of the proposed rule would be to help ensure that aliens who are admitted to the United States, seek extensions of stay or change of status, or apply for adjustment of status are not likely to receive public benefits,” even when needed to preserve their health.²

I. The rule will prevent large numbers of New Yorkers from receiving health care and other services that contribute to good population health.

In New York State, 20 percent of the population are immigrants and immigrants make up 25 percent of the workforce.³ Many of New York’s immigrants make their home in New York City, and the city’s Department of Social Services estimates that 60 percent of its households have at least one immigrant member.⁴ In their review of the proposed rule, they estimate that 304,000 New Yorkers would disenroll or forgo enrollment in public benefit programs, most of whom would not be the actual targets of the rule.⁵

While DHS may believe this to be a positive result, HCFANY does not. The proposed rule lists the repercussions of disenrollments in the named public benefit programs: “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 emergency care as a method of primary health care due to delayed treatment” and “increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated.”⁶ These are serious, negative impacts, yet DHS makes no attempt to quantify them and treats them as an aside.

DHS also acknowledges that disenrollments from the named programs will decrease productivity and educational attainment.⁷ New York State has purposefully chosen to create a robust safety net that includes programs for immigrants first, so individuals and families in New

¹ Bier, David, “New Rule to Deny Status to Immigrants Up to 95% Self-Sufficient,” The Cato Institute, September 24, 2018, <https://www.cato.org/blog/new-rule-deny-status-immigrants-95-self-sufficient>.

² 83 Fed. Reg. at 51229

³ American Immigration Council, “Fact Sheet: Immigrants in New York,” October 4, 2017, <https://www.americanimmigrationcouncil.org/research/immigrants-in-new-york>.

⁴ New York Mayor’s Office of Immigrant Affairs, “Expanding Public Charge Inadmissibility: The Impact on Immigrants, Households, and the City of New York, December 2018, https://www1.nyc.gov/assets/immigrants/downloads/pdf/research_brief_2018_12_01.pdf.

⁵ Ibid.

⁶ 83 Fed. Reg. at 51270

⁷ 83 Fed. Reg. at 51236



York receive the basic necessities, and second, because of the positive impact they have on productivity and educational attainment. Immigration is a key factor in the size and health of New York's economy. This is readily apparent in New York City but is also true in other parts of the state like Buffalo, where immigrants are starting successful businesses and rebuilding areas long-abandoned to urban blight. Our safety net purposefully embraces newcomers because of the contributions they have always made to our state.

II. The rule is already harming New York's children and the proposal to expand it even further to include the Children's Health Insurance Program should be dropped.

DHS has asked for comments on whether or not the Children's Health Insurance Program (CHIP) should be included, and whether or not children's future ability to become permanent residents should be affected if a parent enrolls them in a listed public benefit program. HCFANY finds that both proposals are cruel. DHS should not discourage anyone from meeting the basic needs of children living in the United States, for any reason. New York City's Department of Social Services estimates that at least 72,000 of the people who would disenroll or go without assistance are U.S. citizen children.⁸ HCFANY does not find immigration enforcement to be a compelling enough rationale for discouraging children from accessing health care, food, and safe housing.

HCFANY additionally finds DHS' argument that children are undesirable because they cannot work full-time to be appalling. It is a shocking example of how the rule explicitly defines the value of human beings in terms of earnings. New York State invests in services for children so that they can grow up to be healthy adults. Child labor laws are not a negative feature of American society, they are a safeguard to ensure that children develop to their full potential. The existence of those laws does not mean children are less valuable as human beings or that they should be unwelcome in the United States.

III. The proposed rule is already straining the health system of states like New York that have large immigrant populations.

Health coverage is not just a benefit to the individuals covered, but to the health system at-large. The decrease in uninsured New Yorkers over the past eight years has benefited providers and put the state's hospitals on a better financial footing. DHS acknowledges the negative effects the rule will have on health care providers in the proposed rule, including increased emergency room utilization and "increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient."⁹ The rule will not reduce the number of people who need care – it will just reduce the number of people who can pay for it.

⁸ New American Economy, "Economic Impact of Proposed Rule Change: Inadmissibility on Public Charge Grounds, October 31, 2018, <https://research.newamericaneconomy.org/report/economic-impact-of-proposed-rule-change-inadmissibility-on-public-charge-grounds/>.

⁹ 83 Fed. Reg. at 511270



An increase in the uninsured will affect all New York hospitals, but especially public hospitals. At private hospitals, only about 2 percent of patients are uninsured.¹⁰ At public hospitals, it is 7 percent, a closer match to the actual number of people who are uninsured in New York. New York City's public hospital system estimates that the proposed rule will cost them \$362 million annually.¹¹

The increased financial pressure imposed by the proposed rule will develop congruently with financial pressure created by disproportionate share funding cuts, scheduled for October 2019. Disproportionate share funding supports hospitals that see large numbers of patients who are uninsured or enrolled in public programs. The Affordable Care Act (ACA) scheduled reductions in this funding in anticipation of the decline in uninsured patients many hospitals have experienced because of the ACA's coverage expansions. However, the proposed public charge rule, among other actions taken by the Administration, are reversing that progress.

IV. The analysis presented by DHS of the costs, benefits, and motivation for the rule is does not provide adequate data or evidence in support of the proposed rule.

HCFANY believes that a cost-benefit analysis is an inappropriate metric for determining whether or not people receive health care, food, and shelter and recommends that DHS not use this criterion for determining the value of the proposed rule.

Additionally, the cost-benefit analysis DHS provides appears to be inadequate and inaccurate. It overstates the amount of funding used to provide public benefits to immigrants by using average enrollment rates, despite providing its own data showing that immigrants enroll in public programs at lower rates than native-born citizens. It also overstates how much is spent on benefits for immigrants by ignoring research that indicates immigrants consume lower dollar amounts in assistance when they do enroll.¹²

The DHS analysis also understates the costs of the proposal, by failing to acknowledge the economic impacts of programs like Medicaid and SNAP and the economic contributions that would have been made by immigrants turned away or denied a green card. The unstated assumption behind the rule is that people, immigrants or not, who have used public benefits even temporarily will never contribute in any way to the economy. However, most people, regardless

¹⁰ Office of Quality and Patient Safety, New York State Department of Health, Hospital Inpatient Discharges (SPARCS De-identified): 2016, <https://health.data.ny.gov/Health/Hospital-Inpatient-Discharges-SPARCS-De-Identified/gnzp-ekau/>.

¹¹ "NYC Health + Hospitals, Immigration and Labor Groups Rally New Yorkers to Fight Public Charge and Continue to Seek Care Without Fear," December 5, 2018, <https://www.nychealthandhospitals.org/pressrelease/people-shouldnt-have-to-choose-between-health-care-and-a-green-card/>.

¹² Nowrasteh, Alex and Robert Orr, "Immigration and the Welfare State: Immigrants and Native Use Rates and Benefit Levels for Means-Tested Welfare and Entitlement Programs," May 10, 2018, <https://www.cato.org/publications/immigration-research-policy-brief/immigration-welfare-state-immigrant-native-use-rates>.



of national origin, use programs like Medicaid and SNAP briefly.¹³ Those who have analyzed the possible economic impact of the rule have found the impact could be significant - New York City estimates that the proposal will cause a loss of \$235 million in benefits, which would generate \$420 million in economic activity.¹⁴ The New American Economy estimates that expanding the public charge rule would cost the American economy \$164.4 billion annually including the wages of those who would leave or not be allowed to enter.¹⁵ It is incredible that DHS has proposed such a far-reaching new rule, one that imposes enormous bureaucratic costs, keeps families apart, and threatens the health and welfare of entire communities, with such a rudimentary analysis of its impact.

Finally, DHS provides no evidence that its predictive framework will accurately predict future utilization of public benefits. The prospective nature of the proposed totality of circumstances assessment is alarming. Immigrants would be turned away from entry or denied green cards based on actions they have not yet taken, but DHS proposes to use a tool that is totally untested. DHS asserts that the rule will be simple to administer; HCFANY does not find this statement credible and believes the system proposed in the rule will lead to arbitrary and capricious decisions.

¹³ United States Census Bureau, “21.3 Percent of U.S. Population Participates in Government Assistance Programs Each Month,” May 28, 2015, <https://www.census.gov/newsroom/press-releases/2015/cb15-97.html>.

¹⁴ Ibid. (New York Mayor’s Office of Immigrant Affairs)

¹⁵ Ibid. (New American Economy)