

December 7, 2018

Submitted via www.regulations.gov

U.S. 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)**

Dear Sir or Madam:

I am writing on behalf of The Zellerbach Family Foundation (Zellerbach) to express our strong opposition to the Department of Homeland Security’s Notice of Proposed Rulemaking (“proposed rule”) on “public charge,” published in the Federal Register on October 10, 2018. The proposed rule would cause major harm to immigrants and their families and place a tremendous burden on localities, states, and philanthropy. **We urge that the rule be withdrawn in its entirety, and that the 1999 guidance remain in effect.**

Founded over 60 years ago, Zellerbach serves as a catalyst for constructive social change by initiating and investing in efforts that strengthen families and communities. To date, Zellerbach has invested almost \$113 million, and partnered with public systems, universities, advocates and community-based organizations, to promote the integration of immigrants and refugees, improve human service systems, and promote culture throughout the San Francisco Bay Area region.

The proposed rule would adversely hinder our and others’ efforts to facilitate the integration of immigrants and refugees into our communities because, if adopted, it will undercut the economic mobility and social inclusion of immigrants and their families. The benefits of immigrant integration to the broader society are well documented. As a large and growing share of the workforce, immigrants pay taxes and support local economies as consumers and entrepreneurs.¹ From job creation to higher wages to community revitalization, the full inclusion of immigrants in our communities brings a host of positive economic impacts, benefiting everyone in the community.²

In contrast, the proposed rule will undercut the health and well-being of millions of immigrant families and exacerbate hunger, child poverty, and homelessness among immigrants and U.S. citizen children living in mixed-status families. Nationally, over 19 million, or one in four, children live in a family with an immigrant parent, and nearly nine in ten of these children are

¹ See PolicyLink, *Immigrant Inclusion: Good for Families, Communities, and the Economy* (2016).

² *Id.*

U.S. citizens.³ The proposed rule is expected to lead to significant decreases in Medicaid participation among legal immigrant families and their primarily U.S.-born children, leading to higher uninsured rates and worse health outcomes.⁴ Moreover, lack of access to preventative health care for immigrants could lead to a public health crisis; for example many will lose ready access to vaccinations that not only protect those individuals, but the larger community as well. In addition, the proposed rule would drive up the cost of medical care due to increased reliance on expensive emergency rooms for primary care and delays in seeking treatment until conditions worsen and more extensive and expensive treatments are needed.

Finally, as fewer immigrant families use publicly-funded human service programs, the demand for privately-funded services – like those supported by philanthropic and other charitable dollars – will likely increase. However, while the philanthropic sector is well-situated to supplement and enhance public services, it lacks both the scale of resources and the delivery mechanisms needed to fill a void created as a result of discriminatory rules in government-run programs.

In sum, the proposed rule will roll back decades of investment by philanthropy to increase immigrant families' access to health and social services, reduce racial and ethnic disparities, improve community health and wellbeing, help families weather temporary financial pressures and illnesses, and facilitate long-term self-sufficiency and upward mobility.

The proposed rule will fundamentally and adversely impact the well-being of communities across California and the nation. We therefore urge that the rule be withdrawn in its entirety.

Sincerely,

Allison Magee
Executive Director
Zellerbach Family Foundation

³ See Kaiser Family Foundation, *Proposed Changes to "Public Charge" Policies for Immigrants: Implications for Health Coverage* (September 2018).

⁴ *Id.*

Immigrant Inclusion: Good for Families, Communities, and the Economy



This is one of a series of issue briefs dedicated to helping community leaders and policymakers bolster their campaigns and strategies with the economic case for equity. The issue briefs correspond with the 13 planks of the Marguerite Casey Foundation's [Equal Voice National Family Platform](#). Additional issue briefs can be found at www.policylink.org/focus-areas/equitable-economy.

PolicyLink is a national research and action institute advancing economic and social equity by **Lifting Up What Works**®.

Marguerite Casey Foundation exists to help low-income families strengthen their voice and mobilize their communities in order to achieve a more just and equitable society for all.

Overview

The face of America is changing: more than half of Americans under age five are of color, and by 2044 we will be a majority people-of-color nation. But while communities of color are driving growth and becoming a larger share of the population, inequality is on the rise and racial inequities remain wide and persistent. Dismantling racial barriers and ensuring that everyone can participate and reach their full potential are critical for the nation's prosperity. Equity—just and fair inclusion of all—is essential to growing a strong economy and building vibrant and resilient communities. This issue brief describes how immigrant inclusion can benefit families, communities, and the economy.

Why Immigrant Inclusion Matters

America has more immigrants than any other nation, and they have long enriched our communities culturally, socially, and economically. Today, there are 40 million immigrants living in the United States—13 percent of our total population—and this share is rising. Including children of immigrants, a total of 80 million first- and second-generation immigrants live in our communities.¹

While most immigrants are legally authorized to live here, about 11 million immigrant residents lack authorization but would prefer to be here legally if possible.² The majority of undocumented immigrants (six out of every 10) are well-established community members who have lived in the United States for more than a decade.³

Nearly all economists agree that immigrants—including those who are undocumented—provide a net positive value in our economy. They are a large and growing share of our workforce, entrepreneurs, employers, consumers, and taxpayers, and they will only become more important as baby boomers begin to retire. New immigrant communities are also revitalizing long-distressed neighborhoods and commercial corridors.⁴

Despite their many contributions, immigrants face barriers to fully participating and thriving in their communities and the economy. Undocumented workers, in particular, earn lower wages because of their immigration status and are vulnerable to myriad abuses ranging from harassment to wage theft and threats of deportation. These barriers hurt immigrants and their families and impose costs on our economy and democracy. Ensuring that immigrants are able to manifest their economic potential is both the right thing to do and a smart economic strategy.

Immigrant Inclusion: By the Numbers

1 of every 8

The portion of the U.S. population who are foreign-born

159,000

New jobs that could be created every year by ensuring a pathway to citizenship for undocumented immigrants

\$1.4 trillion

Additional GDP that could be generated over 10 years if undocumented immigrants become citizens

8-11%

Earnings increase to immigrants who gain legal status

Sources: [Center for American Progress](#); [Center for the Study of Immigrant Integration](#); [Center for American Progress](#)

The Economic Benefits of Immigrant Inclusion

Fully including immigrants in social and economic life would have many positive economic impacts.

- **Business development.** Immigrants have always had high rates of entrepreneurship and they are twice as likely to start a business as non-immigrants.⁵ In 2011, immigrants made up 13 percent of the U.S. population but started 28 percent of all new businesses. And between 1996 and 2011, the rate at which immigrants started new businesses increased by 50 percent.⁶
- **Job creation.** In 2007, immigrant-owned small businesses employed roughly 4.7 million people and generated over \$776 billion in revenue.⁷ Fifty-seven percent of small businesses owned by immigrants employ at least one paid employee in addition to the owner.⁸ In addition, studies have shown that the 40 million immigrants living in the United States have created or preserved 1.8 million manufacturing jobs—more than one in seven such jobs nationwide.⁹ Economists estimate that creating a pathway to citizenship for undocumented immigrants would create an estimated 159,000 new jobs annually.¹⁰
- **Community revitalization.** Flourishing immigrant communities can revitalize commercial corridors and towns that have long been abandoned. Worthington, Minnesota, saw its population decline to below 10,000 residents before an influx of primarily Latino immigrants from Mexico helped the community grow and become more diverse.¹¹ In the last 10 years, Worthington's population grew by 11 percent and the new residents helped revitalize the town as they have established roots, purchased homes, and built lives in their new communities.¹² Nationally, research shows that immigrants boost the total housing values of the communities they move into by an average of \$92,800.¹³
- **Increased economic activity.** Making it possible for undocumented immigrants to become citizens would add an estimated \$1.4 trillion to the national economy over the next 10 years due to increased workforce participation; increased consumer power; and contributions to local, state, and federal taxes.¹⁴
- **Increased revenue.** If today's unauthorized immigrants were able to gain citizenship, they would earn 25 percent higher incomes within five years and contribute significantly more to federal, state, and local taxes: an estimated \$116 billion in federal taxes and \$68 billion in state and local taxes over 10 years.¹⁵
- **Higher wages for all.** A recent study revealed how immigrant inclusion creates tangible economic benefits for all workers by measurably increasing their wages. Increases in workplace diversity correlated to 1.6 percent greater wages, while proportionate increases in city-level diversity boosted wages by 6 percent.¹⁶ The places most accepting of immigrants saw even higher wage growth.

Key Challenges to Immigrant Inclusion

There are several key challenges to fully including immigrants in our communities and economy.

- **Organized political opposition.** While polls consistently show that most Americans favor creating a pathway to citizenship for undocumented immigrants, there is also a strong, organized, and enraged opposition.¹⁷ Unauthorized immigrants are often demonized in public and political discourse, making it difficult to have constructive dialogue on potential solutions. Congressional gridlock doomed the chances of immigration reform in 2014 and both parties seem to accept that reform is unlikely in the near future.¹⁸
- **Complex legal framework.** America's immigration system is complex and confusing. The number of annual permanent immigrant admissions is capped at 675,000.¹⁹ This cap was set by Congress in 1990 and does not reflect changes in workforce needs and demands for family unification over the past two decades.²⁰ Reunifying families, admitting highly skilled workers, protecting refugees, and promoting diversity are key principles of the U.S. immigration system, and it uses complicated calculations and requirements to determine quotas within these broad categories.²¹ Although many employers rely on low-skilled immigrant workers, these workers have few opportunities to achieve citizenship in the current system.
- **Extreme vulnerability.** The fear caused by an unauthorized legal status means many immigrants live their lives “in the shadows” with no protection, leaving them vulnerable to fraud, extortion, employment abuse, and other dangers.²² Many states have passed harsh anti-immigrant laws that allow employers to withhold earnings and fail to pay legally mandated overtime. Unauthorized workers also pay into federal, state, and local tax bases but do not receive benefits like Social Security, Medicaid, or Medicare.²³ Studies show that unauthorized workers pay more in state taxes than they receive in state services.²⁴

Strategies for Immigrant Inclusion

While comprehensive immigration reform at the federal level is critical, there are many actions that states and cities can take to support and integrate their immigrant residents.

- **Adopt state-level DREAM acts.** Nationally, there are roughly 2.1 million undocumented youth who were brought to the United States as children. Access to in-state tuition provides them with a better chance of getting a college degree and boosts their future earnings potential. At least 18 states have passed laws permitting undocumented students who meet certain criteria to pay the same tuition at public colleges as their classmates. Higher education boards in Rhode Island, the University of Hawaii, and the University of Michigan have adopted similar policies to provide access to in-state tuition to certain students, regardless of their immigration status.²⁵
- **Create immigrant inclusion policies.** Many states and localities see immigrants as an integral part of their communities and economies, and have adopted policies to facilitate their integration, such as the following.
 - **Provide access to driver's licenses or municipal ID cards regardless of immigration status.** Municipal IDs enable undocumented residents to do everything from opening bank accounts to interacting with their children's schools.
 - **Limit the participation of local law enforcement with Immigration and Customs Enforcement.** Localities can enact policies that prevent law enforcement officers from asking people who have not been arrested about their immigration status. Some 70 cities and states have such laws on the books. These policies keep communities safer by allowing crime victims and witnesses to work with police without fear of federal immigration authorities.
 - **Pass language-access policies.** About half of immigrants living in the United States have limited English language proficiency.²⁷ Requiring agencies to provide interpretation and translation services for English language learners can increase access to and use of their programs and resources.²⁸
 - **Facilitate naturalization.** There are 8.8 million legal permanent residents living in the United States who are eligible for citizenship, but high costs, lack of English proficiency, and lack of knowledge about the process hinder many from attaining citizenship. Cities can help these residents go through this challenging process by providing financial and technical assistance and widely publicizing these services.²⁹ Naturalization would provide access to better paying jobs, academic scholarships, and other benefits.

- **Roll back regressive state and local immigration laws.**

Beginning with Arizona’s SB1070 passed in 2010, states have passed a series of harsh anti-immigrant policies intended to drive out undocumented immigrants. These laws not only disrupt people’s lives, they hinder local and state economies as well by reducing tax revenues, slowing job creation, and discouraging labor force participation.³⁰ Communities can roll back these laws. In 2013, Colorado repealed a law

requiring state officials to report individuals who they suspected to be unauthorized to federal authorities.³¹ Local law enforcers were on board with the repeal, which was part of a legislative shift on immigration that included a state DREAM Act.³²

Equitable Growth in Action

Ensure Immigrants Can Access Services

For many Americans, the ability to provide proof of identity is taken for granted. For undocumented residents, such proof impacts nearly every aspect of their lives. A valid photo ID lets people open bank accounts, enter into their children’s public school buildings, and establish identity when interacting with law enforcement. Municipal IDs can provide the necessary proof of identity or residency necessary for essential services. Several cities already offer their own municipal IDs, including Los Angeles, New Haven, San Francisco, Oakland, and Washington, DC.

The New Haven, Connecticut, program is an example of success. Without proper ID, undocumented workers were unable to open bank accounts. As a result, they became frequent targets of theft because it was widely believed that they stored large amounts of cash either at home or on their person. New Haven launched a municipal ID initiative in 2007. In just five months, the city issued more than 5,000 ID cards. By 2012, 10,000 residents had ID cards. Moreover, the resident card helped foster a sense of belonging and improved relationships between immigrants and law enforcement. It also strengthened the city economically, and the business corridor in the heart of the immigrant-rich Fair Haven neighborhood is thriving.



Sources: [The Center for Popular Democracy](#); [City of Richmond, California](#); [New Haven Independent](#); [The Center for Popular Democracy](#)

Learn More

- [American Immigration Council](#) Policy research related to immigration and immigrant integration.
- [Cities for Citizenship](#) National initiative to increase citizenship among eligible permanent residents.
- [Center for Popular Democracy](#) Supporting campaigns to advance immigrant rights.
- [Center for Community Change](#) Connecting immigrant rights to the cause of economic and social equity.
- [Language Access](#) Overview of the local strategies to provide translation, interpretation, and other language services to residents with limited English proficiency. (Local Progress)

Acknowledgments

Many thanks to Cristina Tzintzún of Workers Defense Project for her thoughtful review and feedback on this brief.

Photo credit: Photo courtesy of Next City/Sarah Kramer.

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Proposed Changes to “Public Charge” Policies for Immigrants: Implications for Health Coverage

Key Takeaways

On September 22, 2018, the Trump Administration announced a proposed rule that would make changes to “public charge” policies. Under longstanding policy, the federal government can deny an individual entry into the U.S. or adjustment to legal permanent resident (LPR) status (i.e., a green card) if he or she is determined likely to become a public charge.

- Under the proposed rule, officials would newly consider use of certain previously excluded programs, including Medicaid, the Supplemental Nutrition Assistance Program, the Medicare Part D Low-Income Subsidy Program, and several housing programs, in public charge determinations.
- The changes would likely lead to broad decreases in participation in Medicaid and other programs among legal immigrant families and their primarily U.S.-born children beyond those directly affected by the changes. 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.
- Decreased participation in these programs would contribute to more uninsured individuals and negatively affect the health and financial stability of families and the growth and healthy development of their children.

Introduction

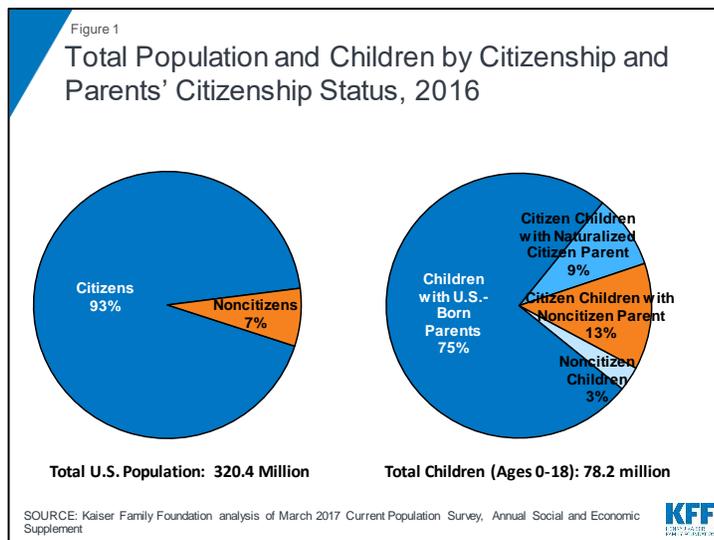
On September 22, 2018, the Trump Administration announced a [proposed rule](#) to make changes to “public charge” policies that govern how the use of public benefits may affect individuals’ ability to enter the U.S. or adjust to legal permanent resident (LPR) status (i.e., obtain a “green card”). The preamble to the proposed rule indicates that its primary goal is to ensure that individuals who apply for admission to the U.S. or for adjustment of status are self-sufficient. The preamble also identifies a range of consequences on the health and financial stability of families as well direct and indirect costs associated with the rule. This fact sheet provides an overview of the proposed rule and its implications for health and health coverage of legal immigrant families and their predominantly U.S.-born children.

Whom Would the Proposed Changes Affect?

The proposed changes to public charge policies would primarily affect immigrants who are applying for a green card through a family-based petition. The proposed rule would affect lawfully present immigrants seeking to become LPRs or “green card” holders and individuals seeking to immigrate to the U.S.¹ Most individuals seeking to adjust to LPR status or to immigrate to the U.S. are immediate relatives of U.S. citizens or have a family-based sponsor. In 2016, 1.2 million individuals obtained LPR

status, including over half a million who were already present in the U.S.² Some immigrants, including refugees and asylees, remain exempt from public charge determinations under law. Public charge policies do not apply to LPRs seeking to obtain citizenship. However, obtaining LPR status is a key step toward citizenship for immigrants seeking naturalization.

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. In 2016, there were 23 million noncitizens residing in the U.S. About six in ten noncitizens were lawfully present immigrants, who include LPRs, refugees, asylees, and other individuals who are authorized to live in the U.S.³ In addition, over 19 million or one in four (25%) children live with an immigrant parent, and nearly nine in ten (86%) of these children are citizens (Figure 1).⁴



What are the Key Changes in the Proposed Rule?

Under longstanding policy, if authorities determine that an individual is “likely to become a public charge,” they may deny that person’s application for lawful permanent residence or their entry into the U.S.⁵ Certain immigrants, including refugees and asylees, are exempt from public charge determinations under law. In making a public charge determination, officials must consider the totality of the person’s circumstances, including, at a minimum, the individual’s age; health; family status; assets, resources, and financial status; and education and skills.

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. Historically, there has been confusion about whether use of Medicaid, CHIP, or other non-cash programs applies in public charge determinations.⁶ In 1999, the Immigration and Naturalization Service (now part of the Department of Homeland Security (DHS)) issued guidance that defined a public charge as someone who has become or who is likely to become “primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense.”⁷ The guidance specified that the federal government would not consider use of Medicaid, CHIP, or other supportive programs in public charge determinations, with the exception of use of Medicaid for long-term institutional care.⁸ The guidance noted that this 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. This reluctance to access benefits has an adverse impact not just on the potential recipients, but on public health and the general welfare.”⁹

The proposed rule would broaden the programs that the federal government would consider in public charge determinations to include previously excluded health, nutrition, and housing programs. The proposed rule would redefine public charge as an “alien who receives one or more public benefits” and would define public benefits to include cash assistance for income maintenance, government-funded institutionalized long-term care, and certain health, nutrition, and housing programs that were previously excluded from public charge determinations. These programs would include non-emergency Medicaid, the Medicare Part D Low-Income Subsidy Program, the Supplemental Nutrition Assistance Program (SNAP), and several housing programs (see Appendix Table 1). The proposed rule does not include CHIP or subsidies for Affordable Care Act Marketplace coverage as public benefits. DHS specifically requests public comment on whether to include CHIP as a public benefit.

The proposed rule would establish thresholds for use of public benefits to determine an individual to be a public charge. These thresholds would be tied to the value of the benefits received and/or total months a benefit was received. Specifically, for benefits that have a cash value or that can be translated into a cash value (e.g., cash assistance, SNAP, housing vouchers, or rental assistance), the threshold would be 15% of the federal poverty level (FPL) for a single person in a 12-month period (\$1,821 as of 2018). For benefits that cannot be translated into a cash value (e.g., Medicaid and public housing), the threshold would be receipt of the benefit for 12 months within a 36-month period or 9 months if an individual receives both types of benefits (i.e., those with a cash value and those without a cash value). Public charge determinations would only consider the value of the benefit going toward the individual and would not take into account benefits received by family members. Public charge determinations would not consider receipt of benefits by active duty or reserve service members or their spouses or children.

The federal government would consider current or recent receipt of public benefits as a heavily weighted negative factor in an individual’s public charge determination. As noted, public charge determinations consider the likelihood of an individual becoming a public charge in the future, based on a totality of circumstances. The proposed rule specifies certain factors that immigration officials would consider as positive factors that would decrease the likelihood of an individual becoming a public charge as well as negative factors that would increase the likelihood of someone becoming a public charge. Under the proposed rule, officials would consider current receipt or approval for receipt of a public benefit or receipt of a public benefit within the previous 36 months as a heavily weighted negative factor. Other heavily weighted negative factors related to health and health coverage include having a medical condition that is likely to require extensive treatment or institutionalization and being uninsured and lacking the financial resources to pay for the medical costs associated with the condition.

The proposed rule also outlines policies related to consideration of income as part of public charge determinations. Specifically, DHS would consider whether the individual has annual gross household income of at least 125% of the FPL (\$25,975 for a family of three in 2018) and would require

specified levels of household assets and resources if the individual has income below that level. Conversely, having income above 250% of the FPL (\$51,950 for a family of three in 2018) would be considered as a heavily weighted positive factor in public charge determinations.

The proposed rule also makes changes related to use of public charge bonds. It outlines policies related to use of public charge bonds that would allow an individual to adjust status if found inadmissible based on a public charge determination and sets the minimum amount of these bonds at \$10,000.

What are the Implications for Health & Health Coverage?

Today, Medicaid fills gaps in private coverage for lawfully present immigrants, providing them access to needed care and financial protections that support their ability to work and care for their children. Medicaid provides families access to preventive and primary care, including prenatal care, as well as care for chronic conditions. In addition, the coverage provides families financial protection from high medical costs. By enabling families to meet their health care needs, Medicaid supports families' ability to work and care for their children. The majority of lawfully present immigrants live in a family with at least one full-time worker (83%), a rate equal to that of citizens.¹⁰ However, lawfully present immigrants are more likely than citizens to live in low-income families and often work in jobs and industries that do not offer health coverage. Reflecting their lower incomes and limited access to private coverage, one in four nonelderly lawfully present immigrants has Medicaid or CHIP coverage.¹¹ However, among the low-income nonelderly population, lawfully present immigrants are less likely than citizens to have Medicaid or CHIP. These lower coverage rates reflect [eligibility restrictions for immigrants](#) that require many otherwise eligible lawfully present immigrants to wait five years after obtaining lawful status before they may enroll as well as barriers to enrollment for eligible immigrants, including fear.¹²

The proposed changes would likely lead to broad declines in participation in Medicaid and other programs among immigrant families, including their primarily U.S.-born children. Despite efforts to assure families that Medicaid and CHIP could not be used in public charge determinations under previous policy, many eligible immigrants did not enroll themselves or their children because they feared that it could negatively affect their status. The proposed rule would amplify these fears, which would likely lead to broad falloffs in participation in Medicaid and other programs among a broader group of individuals than those directly impacted by the policy change. Previous research shows that welfare reform had this chilling effect on immigrant families' participation in public programs and suggests that the proposed rule would likely lead to declines in Medicaid/CHIP enrollment among citizen children with a noncitizen parent.¹³ [Analysis](#) shows that, if Medicaid/CHIP disenrollment rates range 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. Other [recent analysis](#) shows that, prior to announcement of the proposed rule, families were already experiencing growing fears of participation in health, nutrition, and other programs that led them to disenroll or avoid enrolling themselves and their children. The preamble to the proposed rule recognizes that the rule may lead to disenrollment or foregone enrollment in public benefit programs among foreign-born noncitizens as well as U.S. citizens who are members of mixed status households.

Decreased participation in Medicaid/CHIP would increase the uninsured rate among immigrant families, negatively affecting their health and financial stability. Coverage losses would reduce access to care for families, contributing to worse health outcomes. Reduced participation in nutrition and other programs would likely compound these effects. Overall, reduced participation in Medicaid and other programs would negatively affect their health and financial stability and the growth and healthy development of their children, who are predominantly U.S.-born. The preamble to the proposed rule recognizes these and other anticipated impacts. It notes that disenrollment or foregone enrollment in public benefit programs could lead to worse health outcomes, especially for pregnant or breastfeeding women, infants, or children; reduced prescription adherence; increased emergency room use and emergent care due to delayed treatment; increased prevalence of diseases; increased uncompensated care; increased rates of poverty and housing instability; and reduced productivity and educational attainment. Moreover, the preamble to the proposed rule indicates that DHS has determined that the rule may decrease disposable income and increase poverty of certain families and children, including U.S. citizen children. The preamble to the proposed rule also identifies potential impacts on communities, including decreased revenues to health care providers, pharmacies, grocery retailers, agricultural producers and landlords, as well as new direct and indirect costs for individuals and organizations serving immigrant families.

Next Steps

After the proposed rule is officially published in the Federal Register, there will be a 60-day public comment period. Following that comment period and DHS's consideration of the comments, it would issue final regulations and an effective date for the rule. The rule would not be retroactive, meaning that DHS would not consider an individual's use of the previously excluded health, nutrition, and housing programs prior to the effective date established in the final rule in public charge determinations. Substantial outreach efforts would be needed to educate families and stakeholders about the policy changes, which DHS notes will require time and costs for agencies, health care providers, and other individuals and organizations.

Appendix Table 1: Key Differences between Previous and Proposed “Public Charge” Policies

	Policy Based on 1999 Guidance	<u>Proposed Rule</u> Announced September 22, 2018
Definition of Public Charge	An alien who has become or who is likely to become “primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense.”	Public charge means an alien who receives one or more public benefits.
Public Benefits that May Be Considered for Public Charge Purposes	<ul style="list-style-type: none"> • SSI • TANF • State/local cash assistance programs • Public assistance for long-term care in an institution (including Medicaid) 	<ul style="list-style-type: none"> • SSI • TANF • Federal, state, or local cash assistance programs • SNAP • Section 8 Housing Voucher Program • Section 8 Rental Assistance • Medicaid (except for emergency Medicaid, certain disability services related to education, and benefits received by foreign-born children of U.S. citizen parents who will be automatically eligible to become citizens) • Medicare Part D Low-Income Subsidy Program • Institutionalized long-term care at government expense • Subsidized public housing <p>DHS requests public comment on whether to include CHIP as a public benefit.</p>
Consideration of Use of Public Benefits in a Public Charge Determination	<ul style="list-style-type: none"> • May take into consideration past and current receipt of cash public assistance for income maintenance or institutionalized long-term care. • No weight should be placed on receipt of non-cash benefits or receipt of cash benefits for purposes other than income maintenance. • Cash benefits received by children or other family members should not be attributed to the individual, unless the family member's benefits are the family's sole source of support. 	<ul style="list-style-type: none"> • For cash benefits and benefits that can be translated to a cash value, the benefit exceeds 15% of the FPL for a household of one within a 12-month period. • For benefits that cannot be translated into a cash value, receipt of any benefit for more than 12 months within a 36-month period • When an individual receives both types of benefits, benefits that cannot be translated into a cash value are received for more than 9 months within a 36-month period • Would not consider benefits received by active duty or reserve service members and their families. • Would only consider benefits going to the individual, not those received by family members
Heavily Weighted Negative Factors	Not Specified	<ul style="list-style-type: none"> • Not a full-time student and is authorized to work, but is unable to demonstrate employment. • Currently receiving or approved to receive one or more public benefits. • Has received one or more public benefits within the prior 36 months. • Has a medical condition that requires extensive treatment or institutionalization and is uninsured and does not have sufficient resources to pay for medical costs related to the condition. • Previously found inadmissible or deportable on public charge grounds.
Heavily Weighted Positive Factors	Not Specified	<ul style="list-style-type: none"> • Household has financial assets/resources of at least 250% of the FPL • Authorized to work or employed with an income of at least 250% of the FPL

Endnotes

¹ The proposed changes would also affect certain people seeking to extend or adjust their non-immigrant status while in the U.S. The preamble also notes that the proposed rule interprets public charge as it relates to inadmissibility, but not public charge deportability grounds, which will continue to be governed by Department of Justice precedent decisions.

² “Table 6. Persons Obtaining Lawful Permanent Resident Status by Type and Major Class of Admission: Fiscal Years 2014 to 2016,” *2016 Yearbook of Immigration Statistics*, Department of Homeland Security, <https://www.dhs.gov/immigration-statistics/yearbook/2016/table6>, accessed February 12, 2018.

³ Kaiser Family Foundation analysis of the March 2017 Current Population Survey, Annual Social and Economic Supplement.

⁴ Kaiser Family Foundation analysis of the March 2017 Current Population Survey, Annual Social and Economic Supplement.

⁵ Becoming a public charge may also be a basis for deportation in extremely limited circumstances. “Public Charge Fact Sheet,” U.S. Citizenship and Immigration Services, <https://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet>, accessed February 12, 2018.

⁶ This confusion increased after new Medicaid and CHIP eligibility restrictions were imposed on immigrants in 1996. Those restrictions required many lawfully present immigrants to wait five years after obtaining lawful status before they could enroll in Medicaid or CHIP and made some lawfully present immigrants ineligible for coverage. However, they did not change public charge policy.

⁷ “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>.

⁸ Ibid.

⁹ Ibid.

¹⁰ Kaiser Family Foundation analysis of the March 2017 Current Population Survey, Annual Social and Economic Supplement.

¹¹ Ibid.

¹² Ibid.

¹³ 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>.