

December 10, 2018

Kirstjen Nielsen  
Secretary  
Department of Homeland Security  
20 Massachusetts Avenue NW  
Washington, DC 20529-2140

**Re: DHS Docket No. USCIS-2010-0012**

**Re: Inadmissibility on Public Charge Grounds Proposed Rule**

Dear Secretary Nielsen:

On behalf of over 39,000 members of the American College of Emergency Physicians (ACEP), we strongly object to the proposed rule that would change the definition of public charge, and do not believe it should be finalized. Both by law and by oath, emergency physicians care for all patients seeking emergency medical treatment and we therefore oppose any federal initiative that would pressure physicians to refuse care to any persons, such as those who are undocumented, or to report suspected undocumented persons to immigration authorities. This proposal would lead us down a slippery slope that could potentially force us to violate some of our core values as emergency physicians.

The proposed rule would implement new restrictions for some legal immigrants, who are already in the country, to obtain green cards if they have been dependent on public benefits such as food stamps, public housing, Medicare Part D low-income subsidies (LIS), or non-emergency Medicaid. The Administration is also considering adding the Children's Health Insurance Program (CHIP) to this list of benefits, which, as described in more detail below, ACEP particularly opposes. If finalized, the ripple effects of the policy will cause rampant fear and confusion, causing millions of Americans to disenroll from essential programs and stop receiving benefits for which they are eligible. The loss of Medicaid coverage especially would result in poorer health and health outcomes for affected individuals. It also could drive up emergency department (ED) use, uncompensated care costs, maternal and infant health risks, and transmission of infectious diseases. Simply put, this is a dangerous proposed policy that would have adverse effects for all in our country and, if finalized, the consequences will be felt for generations to come.

If this rule were finalized, ACEP believes that many newly eligible individuals would not enroll themselves in Medicaid or other programs and that a potentially sizeable portion of current enrollees would either disenroll from these programs out of fear for their current immigration status. The Kaiser Family Foundation estimates that this rule would lead to Medicaid disenrollment rates ranging from 15 percent to 35 percent among Medicaid and CHIP enrollees living in a household with a noncitizen. Based on this assumption, the Kaiser Family Foundation concludes that 2.1 to 4.9 million adults

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and children could lose their Medicaid coverage.<sup>1</sup> Even if a final policy exempts CHIP, it is unclear what would happen to beneficiaries in states that have opted to implement CHIP as part of Medicaid expansion rather than a separate program. Projected chilling effects of this proposed rule have been bolstered by data from a similar policy implemented following welfare reform in the mid-1990s that saw a 17 percent drop in Medicaid use among the noncitizen population.<sup>2</sup> Finally, your Department estimates that the rule would affect approximately 382,000 individuals based on a five-year average of the estimated total population subject to public charge review for inadmissibility from fiscal years 2012 to 2016.

According to the Urban Institute, there has been a substantial increase over the last decade in the percentage of citizen children with noncitizen parents and citizen children with citizen parents receiving coverage under Medicaid and CHIP. Between 2008 and 2016, Medicaid/CHIP participation increased 15.5 percentage points among citizen children with noncitizen parents and 10.5 percentage points among children with citizen parents.<sup>3</sup> The rule puts the recent coverage progress at risk and would likely increase the number of adults and children who are uninsured. Losing health care coverage increases the financial instability of families and creates a burden to receiving necessary care. When people become uninsured, they may delay seeking vital care until they are too sick to stay away. Deferring or delaying care will often result in a person's condition or symptoms becoming exacerbated, and eventually, result in a trip to the ED. At this point, due to the progression of their condition, the person's care in the ED will be much costlier and more complex than if he or she had earlier access to more routine care in a physician's office. An increase in the uninsured percentage will lead to an overall worsening of health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence. It would also affect patients' "social determinates of health," leading to increased rates of poverty and housing instability and reduced productivity and educational attainment.

This proposal also would make people, whether covered or not, afraid to go to the doctor. When people do not seek treatment for communicable diseases out of fear of reprisal to their immigration status, the diseases can spread and affect anyone, citizens and non-citizens alike. This now becomes a public health issue that impacts the entire community.

As alluded to above, if finalized, the rule would add significant costs to the health care system. An analysis conducted by Manatt Health found that the rule would put \$68 billion in Medicaid and CHIP spending at risk.<sup>4</sup> Emergency physicians will particularly be impacted. We proudly serve as the country's safety net, treating all patients regardless of their insurance status or ability to pay. However, as a result of this vital role that we play, we incur unique financial risks, which include higher rates of uncompensated care than other providers. We depend on adequate reimbursement from public and private payers to allow for the recruitment and retention of sufficient numbers of qualified providers with sufficient staffing 24 hours a day, seven days a week. By increasing uncompensated care costs, this rule could potentially jeopardize the financial viability of the emergency care safety net.

ACEP is also concerned that this rule would impact patient data and security. In order to determine a person's immigration or insurance status, immigration authorities may have to seize electronic health records (EHRs) as part of their investigations. Physicians may therefore be put in difficult situations when deciding what data to

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<sup>1</sup> Kaiser Family Foundation, "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid," 11 October 2018; available at: <https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaid/>

<sup>2</sup> Batalova J et al. Chilling effects: The expected public charge rule and its impact on legal immigrant families' public benefits use. *Migration Policy Institute*. June 2018.

<sup>3</sup> Urban Institute, "Proposed Public Charge Rule Could Jeopardize Recent Coverage Gains among Citizen Children," December 2018, available at: [https://www.urban.org/sites/default/files/publication/99453/proposed\\_public\\_charge\\_rule\\_could jeopardize\\_recent\\_coverage\\_gains\\_among\\_citizen\\_children\\_0.pdf](https://www.urban.org/sites/default/files/publication/99453/proposed_public_charge_rule_could jeopardize_recent_coverage_gains_among_citizen_children_0.pdf)

<sup>4</sup> Mann, Cindy et al, Manatt Health: Medicaid Payments at Risk for Hospitals Under the Public Charge Proposed Rule" November 2018, available at [https://www.manatt.com/Manatt/media/Documents/Articles/Medicaid-Payments-at-Risk-for-Hospitals-Under-the-Public-Charge-Proposed-Rule\\_Manatt-Health\\_Nov-2018.PDF](https://www.manatt.com/Manatt/media/Documents/Articles/Medicaid-Payments-at-Risk-for-Hospitals-Under-the-Public-Charge-Proposed-Rule_Manatt-Health_Nov-2018.PDF)

include in these records in order to protect their patient's privacy and ensure they follow the Health Insurance Portability and Accountability Act of 1996.

The rule may also affect the ability of foreign-trained physicians to continue practicing if they or one of their family members are subject to the new public charge standard. In some areas of the country, especially rural and underserved parts of our country, a foreign-trained physician may be the only provider available to treat a particular disease or condition. If physicians (or their family members) in these areas have issues with their immigration status and are forced to leave, serious access issues could occur, exacerbating the physician shortages that already plague these communities.

While we strongly urge you not to finalize this rule overall for all the above reasons, we do wish to weigh in on the specific request for comment on whether to include CHIP in the list of public benefits that would count toward inadmissibility on public charge grounds. ACEP strongly supports CHIP, and has partnered with states in the past to identify eligible children and to promote the program by providing information and resources to uninsured families during ED visits. Since its inception, CHIP has drastically reduced the number of children that are uninsured. According to the Centers for Medicare & Medicaid Services (CMS), the program currently covers 9.4 million children across the country.<sup>5</sup> Although we oppose any public benefits being used against lawful immigrants seeking permanent residency, we especially oppose including CHIP in the list of public benefits since it would cause some parents to disenroll their children from this vital program and others from enrolling their children in the future. Putting the health of children at risk is morally unethical, and we urge the Trump Administration to reject this immediately.

We appreciate the opportunity to share our concerns about the final rule and ask you again to rescind it in its entirety. If you have any questions, please contact Jeffrey Davis, ACEP's Director of Regulatory Affairs at [jdavis@acep.org](mailto:jdavis@acep.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Vidor E. Friedman". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Vidor E. Friedman, MD, FACEP  
ACEP President

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<sup>5</sup> "Children's Health Insurance Program (CHIP)," Centers for Medicare & Medicaid Services (CMS), available at <https://www.medicaid.gov/chip/index.html>.