

# DRAFT

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 Sir/Madam:

On behalf of the Solano County Board of Supervisors, I am writing to urge the Department of Homeland Security to withdraw its proposed immigration rule adding new factors when determining inadmissibility or denying a change or extension of immigration status based on public charge grounds.

Our County's mission is to promote cost-effective services which safeguard the physical, emotional, and social well-being of all of our residents. We partner with the federal government and the State of California to implement policies and administer programs to accomplish that mission. Given that counties in our state are responsible for delivering health and human services, we offer a unique perspective on the present and potential impact of the rule on not only our state but within our County.

If adopted, the new public charge tests would ultimately punish lawful, working immigrants for accessing non-cash health, nutrition, and housing support programs designed to help families succeed and thrive in Solano County.

The proposed changes to the public charge rules may also indirectly impact health and economic factors for the community as a whole. Nearly 20 percent of our residents were born outside of the United States, a figure that represents the area's diverse population. Thirty-seven percent (37%) of the children in Solano County (age 0-17) live with at least one parent born outside of the United States. Their parents include naturalized citizens, green card holders, and those who are aiming to become citizens. The children are largely U.S. citizens.

The proposal itself has caused a chilling effect on the use of programs by eligible, legal immigrants. Our Department of Health and Social Services (H&SS) and the Food Bank of Contra Costa and Solano County report an increase in client confusion and concerns regarding public charge. Not only would disenrollment or foregone enrollment lead to worse health outcomes and greater poverty risk for the families foregoing benefits, but the public's health at-large could be affected by sicker individuals in the community, increased emergency room use and

uncompensated care. Sicker individuals are less productive economically, and sicker children are known to have greater difficulty in school. There would be economic impacts as well: decreased revenues to health care providers, pharmacies, grocery and other retailers as a result of these impacted families foregoing nutrition assistance and medical coverage; and increased costs for our community based organizations serving immigrants. The chilling effect is likely to be especially acute for non-immigrant/citizen children who may be eligible for health and nutritional supports.

### **Public Charge Background**

For decades, immigration officials have considered an immigrant's receipt of cash assistance, including Temporary Assistance for Needy Families (TANF or CalWORKs in California), Supplemental Security Income (SSI), General Assistance, or payments for long term institutional care in determining whether the applicant is likely to become dependent primarily on government support. This cash assistance test was codified into law under the *1996 Illegal Immigration Reform and Immigrant Responsibility Act* (P.L. 104–208). That law also created a new affidavit of support to counter any concern over the potential receipt of cash benefits.

That same year Congress created the Temporary Assistance for Needy Families program (P.L. 104-193). Other provisions in the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996* (PRWORA; P.L. 104-193) restricted eligibility in law for TANF, Medicaid (Medi-Cal in California) and what is now the Supplemental Nutrition Assistance Program (SNAP or CalFresh in California) during an immigrant's first five years in the United States. Notably, the law did not alter the public charge test on receiving a cash benefit. But, given confusion and concern in immigrant communities, the federal government in 1999 clarified the law using policy guidance to confirm that the public charge test was still based solely on the receipt of cash assistance demonstrating that the immigrant was "primarily dependent on the government for subsistence."

### **The New Proposed Public Charge Tests**

The proposed rule expands through regulation the definition of public charge and adds new negative factors to consider when an immigrant here legally applies to extend or adjust their current immigration status. 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 changing his/her immigration status may be jeopardized.

Additionally, immigration officials would have a new expansive list of other factors to consider when determining a legal immigrant's application, including income, disability, English proficiency and age. When combined with non-case benefits, and immigration official would decide how to adjudicate the case.

The County notes the proposed rule itself agrees with our concerns outlined above. It cautions,

*“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.”*

Another section of the proposal states the 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.”*

Our concerns in are outlined in greater detail below. We describe studies documenting the chilling effect the proposal itself predicts, the potential shifts in costs to Solano County and the new administrative mandates our caseworkers encounter when working with legal immigrants in the County.

### **The Chilling Effect**

Our county is receiving reports that the mere issuance of the proposal is affecting whether legal immigrants apply for or continue receiving federal non-cash benefits. Given the recent leaked drafts and subsequent official Notice of Proposed Rulemaking, those reports are not yet quantifiable. However, as outlined below, the enactment of laws in the past has indeed affected program participation.

The Migration Policy Institute’s June 2018 report summarizes studies performed after the 1996 welfare reform law documenting a large percentage of otherwise eligible legal immigrants choosing to withdraw from federal benefit programs. The U.S. Department of Agriculture 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 and an even greater reduction in participation in the TANF program of 44 percent and 78 percent, respectively.

The UCLA Center for Health Policy Research has estimated, based on the experience in disenrollment from public programs following the 1996 welfare reform law, that between 317,000 and 741,000 Medicaid enrollees could dis-enroll in California due to the proposal. Of those receiving CalFresh benefits, disenrollment of between 129,000 and 301,000 persons may occur.

This fall, the Children’s Partnership of California issued a report estimating a range of potential disenrollment rates among children in immigrant families in our State. Using the Kaiser Family Foundation model to project the public charge impact in California, the Partnership estimates between 15 percent and 35 percent (269,000 to 628,000) otherwise eligible children would lose Medicaid, CHIP and other public health insurance. Similarly, SNAP/CalFresh disenrollment rates of between 15 percent and 35 percent are projected among children in immigrant families -- leading to the loss of 113,000 to 311,000 eligible children no longer participating.

Additionally, a 2018 survey of immigrant families in California conducted by the Partnership found a 67 percent increase in immigrant concerns reported by health providers about enrollment in Medi-Cal, CalFresh, Women, Infants, and Children (WIC) and other public programs, with 40 percent expressing interest in withdrawing from those programs. There was also a 42 percent increase in skipped health care appointments.

Given this likely chilling effect, an immigrant's reluctance to receive immunizations from or interact with our county health department may place our entire community at risk of infectious disease incidences and outbreaks such as influenza and measles.

### **Cost Shifts**

Serving as the safety net for all of our residents, Solano is concerned that the above chilling effect will ultimately increase our financial responsibility for services essential to the health and well-being of all persons in our communities.

Solano County is proud of the enormous progress we and our State have made in to provide health coverage and access to our residents. From 2013 to 2017, California's uninsured rate in California dropped from 17 percent to under seven percent. One in three Californians are enrolled in California's Medicaid/Medi-Cal program. Statewide, one of every two children lives with an immigrant parent and more than half of all children are enrolled in Medi-Cal.

Consequently, forgoing Medi-Cal coverage will result in increased uncompensated care costs to be borne by counties. If immigrants in the County become afraid that receiving basic health care may jeopardize their ability to reside and participate in our communities, they may avoid our county clinics, local health department and other providers, ultimately forgoing preventive care including immunizations or well-baby checkups, for instance. Unfortunately, those choices will likely create future uncompensated care costs when illness or other health crises occur.

Solano County also urges that proposed rule not be amended to include participation in the federally funded Children's Health Insurance Program (CHIP) as a factor in determining public charge. California adopted the provision enacted in 2009 giving states the option to cover immigrant children and pregnant women with Medicaid and CHIP benefits during their first five years in the United States. Solano County's agency workers determine CHIP eligibility, given that it is embedded in our Medicaid program. Including CHIP 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 chose to dis-enroll or not apply for a non-cash benefit to help keep their children healthy.

The rule's chilling effect will directly affect the financial ability of our state's and nation's 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 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. They estimate that California's hospitals alone risk losing \$5.2 billion in revenues, or about one-third of the nation's total.

Along with Texas and Nevada, California is among the states with highest percentage of total Medicaid and CHIP spending at risk. Manatt projects that 26 percent, or \$21.8 billion of California's total Medicaid and CHIP spending, is subject to the chilling effect.

The county also opposes the proposal to include receipt of SNAP as a factor in determining public charge. Nearly four million Californians participate in the program and the vast majority do so for a limited period of time. Additionally, including as another factor the receipt/living in federally subsidized housing in a state with very expensive housing costs may lead to housing instability for some immigrant families.

### **Administrative Complexities**

The proposed rule would create new administrative burdens and complexity for Solano 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. The County would have to provide in the form of “a letter, notice, certification, or other agency documents” evidence demonstrating if the legal immigrant has ever applied for or received benefits, including the exact amount of the benefit and dates of benefits received. This mandate would generate a huge and may require access to information that has been archived from legacy systems no longer accessed.
- *Multiple Application Processes and Undermining Eligibility:* Solano County reduces administrative costs and the need for individuals and families to submit duplicate or similar information through the use of presumptive eligibility. This process allows counties to determine eligibility for other federal programs if the applicant qualifies for just one of them (e.g., Medi-Cal, CalFresh, CalWORKs).

Because of this streamlined application process, enrolling in programs such as the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) program - which are not on the public charge list - will likely be undermined given the chilling effect, and/or will require counties to enhance administrative efforts to increase and conduct separate enrollment procedures. Although it is likely not due to presumptive eligibility, in Solano County, we are already receiving reports of a 20 to 25 percent drop in WIC participation.

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% of WIC participants were eligible due to eligibility for another program.

- *Reduced Use of Applying Online for Benefits:* Similarly, the proposed inclusion of Medi-Cal and CalFresh on the public charge list will also undermine administrative efforts to streamline application processes, given the fact an immigration official would be able to review and count as a negative factor whether an immigrant simply uses an online process to determine or pre-screen eligibility for benefits.
- *Increased “Churn” Among the Eligible Caseload:* As legal immigrants learn about the new rule, more families will terminate their participation in programs, as the County is already experiencing. 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 costs for the County.

For all of these reasons, Solano County strongly opposes adding any additional programs to the totality of circumstances test for legal immigrants and urges the Department to rescind the proposed rule on public charge.

If you have any questions, please contact Gerald Huber, Director, Health and Social Services at [grhuber@SolanoCounty.com](mailto:grhuber@SolanoCounty.com) or 707.784.8400 or Tom Joseph, Washington Representative for Solano County at [tj@paragonlobbying.com](mailto:tj@paragonlobbying.com) or 202-898-1446.

Sincerely,

JOHN M. VASQUEZ, Chair  
Solano County Board of Supervisors