



To: All Interested Parties

**From: Elizabeth Cullen, Counsel for Health Policy
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Date: October 10, 2018

Re: Summary of the Public Charge & Its Threat to Agencies & Populations Served

BACKGROUND

On September, 22, 2018, the U.S. Department of Homeland Security (DHS) released a draft regulation to fundamentally alter long-standing federal immigration policy for *legal/documentated immigrants*, people seeking to enter the United States legally under visas or seeking to stay here under lawful permanent residence status (i.e., green card).ⁱ After careful review and analysis, JFNA believes that these changes would decrease legal immigrants' access to many of the federal safety net programs long supported by JFNA, and pressure millions of legal immigrants to forego needed medical and mental health services, immunizations, prenatal care, nutrition, birth control, and many other vital services. This new draft regulation would have an adverse impact on our health care continuum, essentially forcing immigrant families to choose between their health and their ability to maintain legal residency here in the United States.

Perhaps most concerning, the proposed rule significantly jeopardizes public health access as documented immigrants who, for example, are no longer insured under Medicaid will be unable to afford needed health care, including vaccines or emergency care.

Thus, JFNA anticipates that the proposal is likely to lead to increased demand on non-profit aid programs and services, specifically uncompensated care by safety net providers such as acute health, behavioral health, and long-term care provider agencies, nationwide. With non-profit budgets already under substantial financial pressure, it could have a serious impact on the ability to provide services and make it more difficult for these agencies to hire and retain documented immigrant health care workers.

CURRENT LAW

For over a century, the Immigration Act of 1882 has required most legal immigrants seeking to enter the country or become lawful permanent residents to show that they are not likely to become

dependent on public assistance, in other words to become a “public charge.” The statute itself does not define “public charge.”

In 1999, the Clinton Administration issued guidance clarifying that immigrants can be denied a visa or lawful permanent residency if they are likely to become *primarily dependent* on government cash assistance (e.g., Supplemental Security Income (SSI) benefits, Temporary Assistance for Needy Families (TANF or welfare), or other state/local cash assistance) or government-funded (e.g., Medicaid) long-term care in a nursing home or mental health institution.ⁱⁱ However, until now, the federal government has allowed legal/documentated immigrants working in low-wage jobs to rely on non-cash public safety net programs like Medicaid for their health care coverage or the Supplemental Nutrition Assistance Program (SNAP or “food stamps”) to help care for and feed their families.

DRAFT CHANGES TO FEDERAL “PUBLIC CHARGE” IMMIGRATION POLICY WOULD PENALIZE LEGAL IMMIGRANTS’ MINIMAL USE OF MEDICAID AND OTHER KEY SAFETY NET SERVICES

DHS’ newly released draft regulation ends those exemptions and imposes new income thresholds, making it substantially more difficult for low-wage earning legal immigrants to stay or come to the U.S. if they use even a small amount of a much broader array of non-cash government health, nutrition, and housing programs. For the first time in our nation’s history, these changes would make receiving even minimal public safety net health, nutrition and housing benefits – including Medicaid – grounds for denying immigrants a visa or green card.

Under the draft regulation, in addition to cash assistance (such as SSI, TANF, and Medicaid-funded long-term care in an institution), federal immigration officials could consider an immigrant’s use of the following additional low-income programs as grounds for denying visas or green cards:

- Medicaid, except for emergency health care;
- Medicare Part D low-income subsidies;
- Supplemental Nutrition Assistance Program;
- Section 8 housing vouchers and rental assistance, and public housing.ⁱⁱⁱ

An earlier version of the proposed rule also included use of the Children’s Health Insurance Program (CHIP). Now, the Administration is seeking comments as to whether CHIP should be included.

Finally, the draft regulation proposes that low-income immigrants with severe disabilities or medical conditions requiring extensive treatment and who are unable to cover the treatment’s cost also could be found inadmissible.

POSSIBLE CONSEQUENCES

These changes would reverse long-standing federal policy under both previous Democratic and Republican administrations designed to help legal immigrants become full, participating, and healthy members of society. Even before release of the draft regulation, we have been hearing reports of immigrants avoiding enrollment in Medicaid or other benefits out of fear of being deemed a public

charge. If implemented, this rule likely would cause more immigrants across the country to forego or drop their participation in Medicaid, Medicare Part D, and other federal low-income assistance programs in order to preserve their immigration prospects, while also causing them to forego health care or to seek uncompensated charity care.

JFNA believes that the proposed changes are likely to affect the health and well-being of people in our communities, safety net providers, the health care workforce, and non-profit aid organizations in a variety of ways:

- The rule likely will impact federations that run community assistance programs, which could see increased reliance on their programs.
- The rule likely will impact the bottom lines of federation-supported, non-profit Jewish health (particularly hospitals), behavioral health, and long-term care partner agencies, which will be asked to provide more uncompensated care as Medicaid enrollment among immigrants declines while their uninsured rate rises.
- The rule likely will impact federation-supported Jewish health, behavioral health, and long-term care agencies' ability to hire and retain their health care workers. Approximately 25% of health care support workers, such as nursing and home health aides, are immigrants.
- The rule likely will have a significant, adverse impact on public health. There will be more children in school, more adults in the workplace, and more people in our communities who are not receiving needed services such as food, immunizations, preventive services, and health care for illnesses, including communicable diseases.
- Jewish immigrants coming into the U.S. from Israel and other countries (e.g., Mexico, Venezuela and France) could be similarly affected. The rule could even potentially affect Holocaust survivors who may not have their papers in order.

JFNA's Strategic Health Resource Center works to preserve the ability of our Jewish non-profit health and human services providers to care for Jewish Americans and others in our communities across the country. Protecting vulnerable populations' access to Medicaid, nutrition assistance, and other services is essential to this mission. If implemented, the draft regulation will adversely impact scores of legal immigrants and, by extension, the Jewish communal health and human services partner agencies who care for them.

NEXT STEPS

After the proposed rule is officially published in the Federal Register in the coming days, there will be 60 days to submit public comments. JFNA plans to submit a comment letter, and engage in substantial outreach to engage our federations, partner agencies, and other Jewish non-profit organizations and urge a large response from our communities across the country. We will be in touch regarding a template comment letter that should be adapted for specific communities or provider agencies who believe they will be affected, as well as with specific instructions on how to submit a comment letter.

ⁱ https://www.dhs.gov/sites/default/files/publications/18_0921_USCIS_Proposed-Rule-Public-Charge.pdf (Sept. 22, 2018).

ⁱⁱ 64 Fed. Reg. 28689 (March 26, 1999) (<https://www.gpo.gov/fdsys/pkg/FR-1999-05-26/pdf/99-13202.pdf>).

ⁱⁱⁱ The proposed rule sets thresholds for use of any of these public benefits in determining whether to deny an individual's request for a visa or green card. For cash-value benefits (e.g., TANF, SNAP, housing vouchers or rental assistance), the threshold would be 15% of the federal poverty level in a 12-month period (\$1,821 for a single person and \$3,765 for a family of four). For non-cash benefits (e.g., Medicaid and public housing), receipt of the benefit for 12 months within a three-year "look back" period (or for less than 12 months if the person is also receiving a cash benefit).

Under the proposed rule, in determining whether an immigrant is or will be a "public charge," the federal government would *heavily weight* use of these benefits over these thresholds against the immigrant. Immigrants who could post at least a \$10,000 bond could overcome their past use of public benefits. The government also for the first time would consider whether the immigrant has an annual gross household income of at least 125% of the federal poverty level (\$31,375 for a family of four in 2018), or other assets and resources if not.