

October 22, 2021
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Re: DHS- Docket No. USCIS-2021-0013; Comments on Public Charge Ground of Inadmissibility

Dear USCIS:

As pediatricians and maternal child health researchers at PolicyLab at Children’s Hospital of Philadelphia (CHOP), we welcome this opportunity to comment on the Advanced Notice of Proposed Rulemaking on “Public Charge Ground of Inadmissibility” and to offer our recommendations.

We welcome the agency's efforts to more clearly define “public charge” in a way that will encourage consistency in public charge determinations, reduce the fear that many immigrants face in accessing benefits for which they are eligible, and minimize potential adverse outcomes on immigrant communities.

What follows are our recommendations to ensure that public charge determinations are conducted in a way that will not adversely harm immigrant children and their families in particular. We have structured our responses around some of the key questions posed in the rule. At the end of our comments, we also share research findings that describe harms that resulted from the 2019 public charge rule.

“How should DHS define the term public charge?”

We have significant concerns about the adverse consequences of public charge doctrine in general and wish to see statutory reform. However, we recognize that without action from Congress, public charge is part of the law and that the Department of Homeland Security (DHS) must interpret the statute. Within these constraints, we emphasize that public charge should be narrowly defined and should apply only to those who are primarily dependent on the United States government. This is consistent with both the current active definition (from the 1999 Field Guidance) and the definition from the 1999 proposed rule. The expansion of the definition in 2019 caused significant harm to immigrant families and children, particularly but not only in the context of the COVID-19 pandemic. Even in cases where the public charge rule did not apply to certain groups of immigrants and to certain benefits, confusion and lack of clarity led to a “chilling effect” that made many immigrants afraid to utilize benefits. A narrow definition will ensure that immigrant families feel they can access the public benefits for which they are eligible without fear of negative repercussions, and it will help protect families in times of crisis.

“How can DHS address the potential for perceived or actual unfairness or discrimination in public charge inadmissibility adjudications, whether due to

cognitive, racial, or other biases; arbitrariness; variations and outcomes across cases with similar facts; or other reasons?”

New public charge rules have the opportunity to ensure this policy does not disproportionately impact certain communities more than others. For instance, DHS should prospectively collect summarized data on the demographic and geographic characteristics of who is determined to be a public charge. Such data should be iteratively examined both internally by DHS and in collaboration with external scientific collaborators to ensure that public charge determinations are not systematically discriminating based on race, ethnicity, location of residence or other arbitrary characteristics. We emphasize that public charge should be narrowly defined, as this will also decrease arbitrariness in public charge determinations.

“How should an applicant's age be considered as part of the public charge inadmissibility determination?”

The vacated 2019 rule had indicated that age should be counted as a negative factor for noncitizens younger than 18 years old. We encourage DHS to specifically state that the age factor should not count against children. Immigrant children [thrive](#) when provided with the appropriate health care, education and supports in childhood to help them integrate. For instance, access to Medicaid in childhood has shown [lifelong benefits](#) related to educational attainment and earning potential. Such workforce and economic contributions have [been shown](#) among Deferred Action for Childhood Arrivals (DACA) recipients.

“How should DHS define health for the purposes of a public charge inadmissibility determination?”

“Should DHS consider disabilities and/or chronic health conditions as part of the health factor? If yes, how should DHS consider these conditions and why?”

“Should DHS account for social determinants of health to avoid unintended disparate impacts on historically disadvantaged groups? If yes, how should DHS consider this limited access and why? ”

We recognize that according to statute, DHS officers are required to consider health in public charge and admissibility determinations. However, within this constraint, we encourage DHS to define health as narrowly as possible, and we encourage DHS not to consider disabilities and chronic health conditions as negative factors.

We welcome DHS's mention of the social determinants of health (SDOH). [Social determinants of health](#) are the conditions in the environments where people are born, live, learn, work, play, worship and age that affect a wide range of health, functioning and quality-of-life outcomes and risks. For instance, limited access to healthy foods, safe and affordable housing, education, transportation, health care and other factors can have a dramatic negative effect on a person's health. Negative social determinants of health are associated with [higher risks of both chronic](#)

[and infectious disease](#). For instance, children in different communities are [differentially exposed](#) to environmental factors that worsen asthma like industrial air emission pollution.

Chronic health conditions are [more common](#) among many marginalized populations, including [racial and ethnic minorities](#), largely because of disproportionate yet systematic exposure to adverse social determinants of health. Considering chronic health conditions in public charge determinations is, in practice, very likely to lead to discrimination. Thus, we [strongly discourage DHS from considering chronic health conditions as part of public charge determinations](#).

We further emphasize that chronic health conditions are a poor measure of whether any individual person would become a public charge. The effects of any given chronic health condition can vary significantly by patient. Proper care management of many chronic conditions can also lower health care utilization costs. For instance, a range of interventions are [highly cost-effective](#) for diabetes, including diabetes education and self-management, screening for complications, and statin treatments. Interventions to address patients' social needs can also [significantly lower costs](#) for patients, payers, and health care systems.

We similarly discourage the consideration of disabilities in public charge determinations, and emphasize that disability should not be considered as part of the health factor. The mere presence of a disability is a poor predictor of a person's ability to work and be self-sufficient. Rather than rely on the "medical model of disability" (a traditional view that treated disability as a trait inherent to an individual), we encourage DHS to focus on the [social model of disability](#) (which defines disability as arising primarily from external, social factors that stigmatize and pose barriers to those with nonstandard bodies). When provided with appropriate accommodations, individuals with disabilities are often [highly productive](#) in the workplace. Including disabilities in public charge determinations would be discriminatory and would also be a poor measure of a person's actual likelihood of becoming a public charge.

The vacated 2019 rule had also stated that the use of private health insurance (without using subsidies under the Affordable Care Act) should be a heavily weighted positive factor, while Medicaid was included under the rule's list of benefits that counted as negative factors (with the exception of Medicaid for children and pregnant women). [We strongly discourage consideration of health insurance coverage as part of any public charge determinations](#).

Considering health insurance coverage and source of coverage may contribute to systematic discrimination and health disparities. For instance, most racial and ethnic minority populations are more likely than White populations [to be uninsured](#) and are more likely to [rely on Medicaid](#). In addition, private health insurance coverage is [unattainable](#) even for many American citizens, largely because of cost. Most full-time workers living below the poverty line [do not receive health insurance](#) from their employers. Given the inaccessibility and cost of private insurance, it is unreasonable to expect immigrants to have private insurance while avoiding public insurance.

Finally, when health insurance coverage is considered in public charge determinations, immigrants are more likely to avoid using health insurance for fear of immigration consequences. (After the 2019 Rule, there was a steep [decline in Medicaid enrollment](#) for both

adults and children and a decline in [marketplace enrollment](#), demonstrating the far-reaching consequences of the chilling effect even when specific populations or types of benefits are exempt). This avoidance of health insurance in turn risks significant harm to both immigrant families and the wider economy, as health insurance access is associated with a wide range of positive benefits. For instance, Medicaid expansion under the Affordable Care Act has been associated with [many health and economic benefits](#), including greater use of preventive services, better management of chronic health conditions, lower costs of uncompensated care, and improved worker productivity.

“Should DHS consider the receipt of public benefits (past and/ or current) in the public charge inadmissibility determination? If yes , how should DHS consider the receipt of public benefits and why?”

A person’s current or previous use of public benefits is a poor measure of their overall contribution to the U.S. economy. Because of low wages and [intermittent employment](#), even many working United States citizens regularly [struggle to get by](#) and rely on government benefits. For instance, [most recipients](#) of SNAP benefits actively participate in the workforce. At the same time, many of these lower-wage workers fulfill vital roles. The COVID-19 pandemic shed light on how many “[essential workers](#)” (those working in roles and industries deemed vital for the functioning of the nation) are poorly paid and underinsured. Immigrants make up a [disproportionate share](#) of the essential workforce, and many paid a steep price for their contributions during the pandemic. For instance, our own research indicated [higher rates](#) of COVID-19 exposure among Burmese and Bhutanese refugees who were essential workers than among those who were not, and [national data](#) have indicated that immigrants made up nearly one-third of all deaths among health care workers in 2020.

We therefore discourage the consideration of past or current receipt of public benefits in public charge and admissibility determinations. Immigrants provide vital contributions to our economy and society, often at high cost to themselves, and examining their use of benefits is unlikely to capture this balance. If immigrants are eligible for benefits, they should be allowed to utilize them without fear.

If DHS decides to include public benefits in public charge and admissibility determinations, any list of benefits must be kept as narrow as possible and clearly defined. A broader or unclear scope risks significant confusion and will further the chilling effect. For instance, the 2019 rule change caused many immigrant families to drop out of programs that were not even included in public charge determinations, including [children’s Medicaid coverage](#) and the [Special Supplemental Nutrition Program for Women, Infants, and Children \(WIC\)](#).

“Which public benefits, if any, should not be considered as part of a public charge inadmissibility determination?”

We encourage DHS to exclude from public charge determinations all public benefits for which immigrants are eligible. However, as child health researchers, we particularly emphasize that all

benefits that affect public health and that affect children should be specifically excluded. These include, but are not limited to:

- Medicaid for both adults and children, the Children’s Health Insurance Program (CHIP), and ACA (Affordable Care Act) subsidies to help purchase marketplace insurance
- Nutrition benefits, including Supplementary Nutrition Assistance Programs (SNAP), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and school meal programs
- Early Intervention (EI) Services
- Housing benefits, including public housing, rental assistance, and energy assistance
- Child care subsidies
- Disaster relief
- Unemployment insurance benefits
- Tax credits such as the Earned Income Tax Credit (EITC), the Child Tax Credit (CTC), and the Additional Child Tax Credit (ACTC)

We emphasize that [the health of caregivers directly impacts the health of children](#). For instance, when a birthing individual has access to at least one year of postpartum Medicaid, they may more easily access treatment for postpartum depression, which can in turn [improve the safety, health, and development of children](#). Despite assurances in the vacated 2019 Rule that many benefits determinations did not apply to children, when families and caregivers do not use benefits to which they are entitled, this negatively impacts their children as well.

We also emphasize that any benefits funded by state and local governments should be explicitly excluded from public charge determinations. Public benefit programs improve the health and well-being of both families and communities and many lead to [overall cost savings](#). These public policy considerations have prompted [many states](#) to provide their own safety net programs to immigrants. State and local governments should be allowed to offer public health and public welfare programs that they have funded themselves without interference from the federal government.

“What data does your agency or organization have that can be shared to demonstrate any potential impact of the public charge ground of inadmissibility, the 1999 interim field guidance, or the vacated 2019 final rule on applications for or disenrollment from public benefits by individuals who are eligible for such benefits?”

In 2020, PolicyLab took part in the Pennsylvania Department of Health’s COVID-19 Health Equity Response Team. As part of that process, our researchers conducted a statewide survey of 108 stakeholders who were leaders in immigrant communities. Respondents were asked to identify the top challenges faced by, and top sources of resilience for, immigrant communities during the pandemic. We summarized these findings in a [white paper](#).

The most common barrier (cited by 63% of respondents) was loss of employment or other income. Respondents emphasized the need for income supports for their communities. Some respondents also specifically emphasized the harms caused by the 2019 public charge rule. For instance, one respondent stated, “for those who are in different stages of being [documented] and eligible, fear of public charge prevents them from seeking access to these programs.” Another said “the COVID-19 and public charge exemptions are difficult to understand in English if English is your first language. We've fielded multiple calls from immigrants who are scared to apply for SNAP benefits and have no food to feed their families because of the public charge laws.”

We saw during the COVID-19 pandemic that immigrants' accessing fewer supports or having fewer avenues for legal recourse led to their feeling compelled to continue working under unsafe conditions or experiencing unnecessary material hardships. Our research has indicated [higher rates](#) of COVID-19 exposure among Burmese and Bhutanese refugees who were essential workers relative to those who were not. Our research has also shown higher rates of COVID-19 test positivity among [pregnant women](#) with limited English proficiency (LEP) compared to those without LEP, and higher test positivity rates among [children](#) from families with a preferred language other than English relative to those who preferred English. More concisely and narrowly defining public charge will strengthen our immigrant communities and communities at large.

Thank you for the opportunity to provide comments, and for taking the time to consider our feedback. We look forward to seeing future rules to improve public charge determinations and welcome an opportunity to continue to engage with you. Please contact Caroline La Rochelle, Policy and Strategy Senior Associate, with any further questions or opportunities to expand on the areas covered here: lrochelle@chop.edu

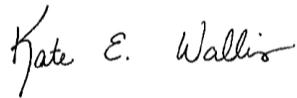
Sincerely,



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