

April 25, 2022  
Department of Homeland Security  
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 DHS:

As pediatricians, maternal child health researchers and policy experts at PolicyLab at Children's Hospital of Philadelphia (CHOP), we welcome this opportunity to comment on the Proposed Rule on "Public Charge Ground of Inadmissibility" and to offer our recommendations.

We [submitted detailed comments](#) on the Advanced Notice of Proposed Rulemaking (ANPRM) in October 2021 and are pleased to see that many of our recommendations were adopted into the proposed rule. We again 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.

We highlight below some key elements of the proposed rule that we support, changes that we believe are still necessary and additional considerations for DHS as it considers how to implement this final rule.

### ***Support for key elements of the proposed rule***

We welcome many elements of the proposed rule on public charge. From our perspective as pediatricians and child health researchers, we particularly wish to highlight the following considerations:

- We support the return to a narrower definition of public charge, which we believe will improve clarity and reduce the 'chilling effect' of the uptake of safety net programs in immigrant communities. We specifically welcome the explicit exclusion of most non-cash benefits, which (as we highlighted in our comments on the ANPRM) play a vital role for the health and well-being of children and families, protect the public health of the nation at large and are a poor measure of whether someone is likely to become primarily dependent on the government for subsistence.
- We welcome DHS's statement that the presence of a disability will not alone be a sufficient basis to determine that a noncitizen will be likely to become a public charge, including its recognition "that the presence of a disability does not equate to having a chronic medical condition or the need for ongoing medical treatment."
- We welcome DHS's clarification that when states, territories, and Tribes use TANF block grants for purposes other than cash assistance for income maintenance, these uses of funds should play no role in public charge determinations.

- We welcome DHS’s clarification that cash payments should be exempt when they do not constitute primary dependence on the government for subsistence. For instance, as described in our previous comments, we emphasize that earned cash benefits, tax credits and deductions, and cash assistance for special purposes (including disaster assistance and cash assistance related to public health emergencies) should be specifically exempt from any public charge determinations.
- We welcome DHS’s clarification that benefits received by family members should not impact public charge determinations.
- We support DHS’s clarification that all forms of refugee benefits should be excluded from public charge determinations, regardless of whether that individual is legally classified as a refugee. As highlighted by DHS in the proposed rule, many other groups of noncitizens (such as Afghan evacuees) face similar challenges as refugees, and Congress has extended refugee benefits to many of these groups for humanitarian and public policy reasons.

### ***Recommended changes and considerations for implementation***

We recommend that DHS make the following changes to the proposed rule:

#### **Exclude benefits received by children from public charge determinations**

We appreciate DHS’s concern about the potential effects of public charge policy on children, including children in mixed-status households. The most effective way to protect children would be to specifically exclude children and teens from public charge determinations. While DHS is required to consider age as a statutory factor, the statute does not require DHS to specifically include children.

Public charge determinations are inherently prospective in nature. We emphasize that it would be very difficult to accurately predict a child or teenager’s future likelihood of becoming primarily dependent on the government for subsistence. Most youth will not even have entered the workforce yet, and any policies that might inadvertently encourage youth to prioritize current finances over education could undermine their long-term earning potential (and, by extension, their likelihood of becoming primarily dependent on the government for subsistence).

We also highlight that children, as dependents, typically have little agency over what benefits are used in their name. Generally a child’s caregivers will be making decisions about whether to utilize benefits, and children should not be penalized for these decisions.

#### **Enhance protections for survivors of intimate partner violence**

As stated earlier, we welcome the agency’s clarification that benefits received by family members should not be considered in public charge determinations. However, we are concerned about the proposed metric of considering receipt of benefits “only where such noncitizen is a named beneficiary.” Many survivors of intimate partner violence (IPV)

have limited control over finances or situational decision making when they are in abusive relationships, including financial, housing, medical and behavioral health care, and employment decisions and documentation status that may be made for them in their name. Survivors may be coerced into applying for benefits in their own names, and many survivors will also need cash assistance in order to provide for their own safety and the safety of their children resulting from their abusive circumstances. We recognize that some survivors will qualify for special immigration statuses that exempt them from public charge determinations. However, survivors who do not fall into one of these legal categories must also be protected.

DHS should thus proactively ensure that for any survivors of intimate partner violence, all forms of cash assistance be specifically excluded from public charge determinations. We appreciate DHS's statement that "[cash] assistance specifically targeted to aid survivors of trafficking or crime" will be exempt. However, we emphasize that DHS should not focus narrowly on benefits that are specifically targeted to this population. Instead, DHS should exclude *all* sources of cash assistance received by survivors, even when that assistance is not earmarked for IPV survivors specifically.

DHS should also carefully consider the unique needs of IPV survivors in public charge determinations. For instance, strong confidentiality requirements related to the preservation of adult survivor and child-associated safety may limit the information available to DHS, making it more difficult to access information about potential survivors of IPV. We strongly encourage DHS to consult with experts in the fields of intimate partner violence and domestic violence in order to ensure that in this proposed rule, any associated guidance, and trainings for adjudication officers, the unique needs of this population are carefully considered.

### **Ensure that the health factor considers only permanent and irreversible medical conditions**

As we stated in our comments on the ANPRM, discrimination is likely to result if chronic health conditions are considered in public charge determinations. 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. The effects of any given chronic health condition can vary significantly by patient, and proper care management of many chronic conditions can also lower health care utilization costs. Continuing advances in the medical field may also make health conditions increasingly easy to treat over time.

As a result, while we recognize that DHS must consider health as a statutory factor, we encourage DHS to focus narrowly on situations in which a person's health condition is likely to permanently and irreversibly make them primarily reliant on the government. Even in these situations, we stress that medical outcomes are difficult to predict and may be heavily dependent on outside factors (such as access to appropriate care). We

appreciate DHS's clarification that the presence of a chronic health condition alone will not be sufficient to consider someone likely to become primarily dependent on the government for subsistence. We encourage DHS to stress in all of its materials, including its training of officers, that the health factor is only one of many factors to be considered in weighing "the totality of the circumstances," and that any decisions relating to the health factor must be grounded in medical evidence.

### **Ensure that qualified medical experts are included in any individual determinations based heavily on the health factor**

Because it is exceedingly difficult to predict future health outcomes for an individual patient, we emphasize that any time a public charge determination will likely rely substantially on health considerations, DHS should ensure that a qualified medical professional is consulted (or in the case of behavioral health conditions, that a qualified behavioral health professional is consulted). Adjudication officers will typically lack the necessary expertise to understand how an individual's health conditions may impact outcomes such as their ability to work or their long-term healthcare utilization. Adjudication officers should not make decisions solely on the presence of a given diagnosis, or otherwise interpret medical information without the support of trained medical professionals. Only qualified medical professionals should determine whether a patient's condition is likely to be permanent and irreversible.

### **Ensure that empirical analyses exploring public charge outcomes use sufficiently detailed data metrics**

In the proposed rule, DHS proposes that its agency United States Citizenship and Immigration Services (USCIS) conduct empirical analyses to learn how the factors included in the totality of the circumstances approach may predict whether a noncitizen is likely to become a public charge. We stress the importance of nuanced approaches in any such analyses. For instance, as described above, outcomes for patients with a given medical diagnosis may vary widely. We caution against any approaches that would consider, for instance, patients with diabetes as an aggregate. We also emphasize that any analysis of the various statutory factors must include the perspective of experts in those fields. For instance, in the case of the health factor, any studies and data analysis should incorporate the perspectives of medical researchers.

### **Collect data to identify potential disparate impacts, and ensure that equity is centered in any empirical analyses**

As we stated in our comments on the ANPRM, new public charge rules have the opportunity to ensure this policy does not disproportionately impact certain communities more than others. DHS should prospectively collect 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

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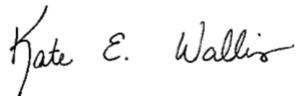
systematically discriminating based on race, ethnicity, location of residence or other arbitrary characteristics.

Thank you for the opportunity to provide comments, and for taking the time to consider our feedback. We look forward to improvements to public charge determinations and welcome an opportunity to continue to engage with you. Please contact Caroline La Rochelle, Policy and Strategy Senior Associate ([larochelle@chop.edu](mailto:larochelle@chop.edu)) or Rebecka Rosenquist, Policy Director ([rosenquistr@chop.edu](mailto:rosenquistr@chop.edu)) with any further questions or opportunities to expand on the areas covered here.

Sincerely,



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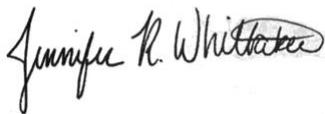
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