

United States Senate

WASHINGTON, DC 20510

December 10, 2018

Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, N.W.
Washington, DC 20529-2140

Re: DHS Docket No. USCIS-2010-0012

Dear Chief Deshommes,

We write regarding the Department of Homeland Security's (DHS) proposed rule titled *Inadmissibility on Public Charge Grounds* (DHS Docket No. USCIS-2010-0012), which would drastically expand the agency's definition of a "public charge." We have heard from stakeholders and constituents about the harmful implications of the proposed rule, and we share their concerns. Immigrant families across Massachusetts and the country are already being harmed by these proposed changes, and we urge the agency to withdraw this proposed rule.

Federal law requires DHS to determine whether certain immigrants seeking a green card or entry into the United States are likely to rely on government benefits as their primary source of support — also known as becoming a public charge.¹ This designation is consequential; if an immigrant is labeled a public charge or is identified as likely to become a public charge, the government can bar that individual from gaining entry to the U.S., becoming a lawful permanent resident, or obtaining a new visa.¹

After Congress passed the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, the Clinton Administration issued guidance to clarify how to determine whether an individual would be deemed a public charge.² These regulations, which are in effect today, state that an individual can be considered a public charge if he or she is primarily dependent on long-term institutional care benefits provided by the government or cash assistance, including Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), or equivalent state or local programs.

The proposed rule that DHS issued on October 10, 2018 would establish several "heavily weighted negative factors" in public charge inadmissibility determinations, including an

¹ Section 212(a)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1182.

² Jonathan Blitzer, *Trump's Public-Charge Rule Is a One-Two Punch Against Immigrants and Public Assistance*, The New Yorker (Sept. 28, 2018), <https://www.newyorker.com/news/dispatch/trumps-public-charge-rule-is-a-one-two-punch-against-immigrants-and-public-assistance>; U.S. Citizenship and Immigration Services, "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, [64 FR 28689] [FR 27-99]," May 26, 1999, <https://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-54070/0-0-0-54088/0-0-0-55744.html>.

expanded list of public benefits.³ Under the proposed rule, in addition to cash assistance and long-term care benefits, benefits considered in public charge determinations would now include non-emergency Medicaid (with exceptions for certain education-related disability services), the Low-Income Subsidy for prescription drug costs under Medicare Part D, the Supplemental Nutrition Assistance Program (SNAP), the Section 8 Housing Choice Voucher Program, Section 8 Project-Based Rental Assistance, and Public Housing. Additionally, the proposed rule would redefine a public charge as an individual who receives or has received within a look-back period one or more of the expanded list of benefits, rather than someone who is primarily dependent on cash assistance or government-funded long-term care. The proposed rule also directs immigration officials to consider, and give heavy negative weight to, new factors that will make it harder for low and moderate income families to pass the public charge test.

If finalized, the effects of this policy change will be devastating for our nation's low-income legal immigrants, particularly mothers and young children — including U.S. citizen children born to non-citizen parents in the United States. This proposed policy cruelly forces immigrant families to choose between accessing essential health, nutrition, and low-income benefits on the one hand, and jeopardizing their ability to stay in the United States on the other.

Despite the rule not yet being finalized, expectations of its consequences have shaken the immigrant community. An earlier leaked version of the DHS proposal included the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) as one of the programs considered in a public charge determination. Although WIC is not included in the official proposed rule, at least 18 states reported seeing enrollment drops of up to 20 percent in WIC following reporting of the leaked draft.⁴ As we are already seeing, the proposed rule is having a significant chilling effect, as immigrant families are being deterred from accessing critical social services.

We have heard stories of legal immigrants deterred from seeking health care and nutrition benefits or tax credits for which they are eligible because they fear that doing so would negatively affect their immigration petitions. For example, María José and her husband are residents of Stoneham, MA, and are immigrants from Mexico seeking to become lawful permanent residents. In August 2018, the couple dropped out of MassHealth, our state Medicaid program, after the leak of an earlier draft of the proposal, fearing that their enrollment would hurt their immigration status.⁵ They are not alone. Children's Health Watch, a group founded at Boston Medical Center (BMC) and representing pediatricians, public health researchers, and children's health and policy experts, expressed that "even before the rule was published, families in our pediatric clinics reported making agonizing choices to remove their families from vital

³ DHS Docket No. USCIS-2010-0012, <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>

⁴ Helena Bottemiller Evich, *Immigrants, fearing Trump crackdown, drop out of nutrition programs*, Politico (Sept. 3, 2018), <https://www.politico.com/story/2018/09/03/immigrants-nutrition-food-trump-crackdown-806292>.

⁵ Editorial Board, *Anti-immigrant plan threatens health care in Massachusetts*, Boston Globe (Sept. 26, 2018), <https://www.bostonglobe.com/opinion/editorials/2018/09/26/anti-immigrant-plan-threatens-health-care-massachusetts/hOkzxm6P1Fh7AqvX9ojuK/story.html>.

assistance programs that ensure their children are able to eat healthy foods and receive medical care, out of fears for their future immigration status.”⁶

If the rule goes into effect, the consequences will be considerably more harmful. The City of Boston has estimated the economic burden of the rule at \$14 to \$57 million per year, primarily due to uncompensated care costs at Boston hospitals,⁷ and has estimated that more than 13,165 adults and 1,614 children may drop out of MassHealth.⁸ The Massachusetts Budget and Policy Center estimates that as many as 500,000 people in Massachusetts, and 23.8 million nationwide, could forgo critical health, housing, and food benefits should the rule be finalized.⁹ At BMC and Cambridge Health Alliance, Drs. Sarah Kimball, Nicolette Oleng, and Elisabeth Poorman “know that patients with treatable conditions like diabetes and hypertension will avoid seeking care. They will only come when it is too late, which will likely result in higher system costs.”¹⁰ The rule will not only directly impact the health and wellness of these individuals and their families, it will further strain safety-net and community care organizations, which may experience an uptick in uncompensated care costs attributable to the impact of the rule.¹¹

This chilling effect will be particularly harmful for the children of immigrants, the vast majority of whom are U.S. citizens. According to the Migration Policy Institute, a quarter of all children in the United States have at least one immigrant parent, and children of immigrants make up 31 percent of all children in benefits-receiving families.¹² About 90 percent of these children are U.S.-born.¹³

Across Massachusetts, health care providers are distressed by the ramifications of these proposals on the health of their patients and communities. Drs. Kimball, Oleng, and Poorman stated: “It will be impossible for us to promote the health of our communities when so many are

⁶ Children’s HealthWatch, “Children’s HealthWatch’s Statement Opposing Changes to Public Charge” (Sept. 25, 2018), <http://childrenshealthwatch.org/childrens-healthwatchs-statement-opposing-changes-to-public-charge-2/>.

⁷ Boston Planning & Development Agency, “Impact of Proposed Federal Immigration Rule Changes in Boston: Public Charge Test for Inadmissibility,” <http://www.bostonplans.org/getattachment/e856c564-bf0f-47d4-9a44-75b430903f82/>.

⁸ *Id.*

⁹ Nancy Wagman, *A Chilly Reception: Proposed Immigration Rule Creates Chilling Effect for New Immigrants and Current Citizens*, MassBudget (Nov. 14, 2018), <http://www.massbudget.org/reports/pdf/11.14.2018%20A%20Chilly%20Reception.pdf>.

¹⁰ Drs. Sarah Kimball, Nicolette Oleng, and Elisabeth Poorman, “Trump’s ‘Public Charge’ Rule Could Mean Life-And-Death Decisions for Legal Immigrants,” WBUR (Sept. 28, 2018), <http://www.wbur.org/commonhealth/2018/09/28/doctors-public-charges>.

¹¹ Dan Goldberg, Victoria Colliver & Renuka Rayasam, “Public charge’ rule keeps immigrants away from health programs, advocates say, Politico (Nov. 20, 2018).

¹² Jeanne Batalova, Michael Fix, & Mark Greenberg, *Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families’ Public Benefits Use*, Migration Policy Institute (June 2018). <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>

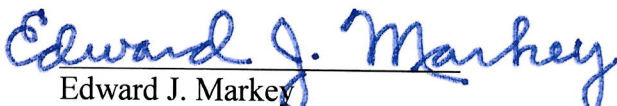
¹³ *Id.*


fearful of accessing basic care.”¹⁴ The Massachusetts Medical Society, representing 25,000 member physicians and medical students, claimed that the proposed rule “would significantly impede access to essential health care to persons lawfully present in the United States, a policy fundamentally inimical to the laws of our country and the health of our patients.”¹⁵ Children’s Health Watch expressed that the rule “will compromise the health of current and future generations, diminish their ability to excel in school, work and life, and diminish the human potential of communities across the nation.”¹⁶ Additionally, the City of Boston warned that if the rule is implemented, “disenrollment from immunization services (influenza, mumps, rubella, etc.) as well as other preventive services against communicable diseases (diphtheria, cholera, HIV, etc.) will have incalculable implications to the local economy as well as potentially severe health consequences for both those disenrolling and the population at large.”¹⁷

DHS has stated that it is issuing the proposed rule to promote immigrant self-sufficiency and reduce spending on public benefits programs. But the policy change would be counterproductive to that goal. Expanding the public charge rule would effectively prevent countless families who may have encountered tough times, from achieving or regaining financial self-sufficiency, which, in turn, would lower the future economic status of their children.

We urge DHS to reject the proposed rule and instead work with stakeholders to ensure any future changes to public charge regulations do not negatively impact law-abiding immigrants. Thank you for considering our comments and those of Massachusetts stakeholders.

Sincerely,


Edward J. Markey
United States Senator


Elizabeth Warren
United States Senator

CC: The Honorable Kirstjen Nielsen, Secretary, Department of Homeland Security
The Honorable Alex Azar, Secretary, Department of Health and Human Services

¹⁴ Drs. Sarah Kimball, Nicolette Oleng, and Elisabeth Poorman, “Trump’s ‘Public Charge’ Rule Could Mean Life-And-Death Decisions for Legal Immigrants,” WBUR (Sept. 28, 2018),

<http://www.wbur.org/commonhealth/2018/09/28/doctors-public-charges>.

¹⁵ Letter from MMS President Alain A. Chaoui to DHS Secretary Nielsen, (Nov. 19, 2018), <http://www.massmed.org/Advocacy/Federal-Advocacy/Public-Charge-Comments-11262018/>.

¹⁶ Children’s HealthWatch, “Children’s HealthWatch’s Statement Opposing Changes to Public Charge” (Sept. 25, 2018), <http://childrenshealthwatch.org/childrens-healthwatches-statement-opposing-changes-to-public-charge-2/>.

¹⁷ Boston Planning & Development Agency, “Impact of Proposed Federal Immigration Rule Changes in Boston: Public Charge Test for Inadmissibility,” <http://www.bostonplans.org/getattachment/e856c564-bf0f-47d4-9a44-75b430903f82/>.