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December 10, 2018

Samantha Deshombres, 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

Submitted electronically via: <http://www.regulations.gov>

Re: DHS Docket No. USCIS-2010-0012, RIN 1615-AA22, Comments in  
Response to Proposed Rulemaking: Inadmissability on Public Charge  
Grounds

Dear Ms. Deshombres,

The Local Health Plans of California (LHPC) writes to the Department of Homeland Security (DHS) to express our opposition to the proposed rule "Inadmissability on Public Charge Grounds" which was published in the Federal Register on October 10, 2018. LHPC represents all 16 community-based, not-for-profit health plans that provide health coverage for nearly eight million beneficiaries enrolled in California's Medicaid program, Medi-Cal. The local health plans provide critical health care services to low-income Californians and collectively operate a delivery system that is the largest community-based, not-for-profit, and publicly accountable in the nation. LHPC is particularly concerned with the proposed rule's inclusion of Medicaid and consideration of the Children's Health Insurance Program (CHIP) in public charge determinations. Our specific comments are outlined below.

**Background.** Existing DHS regulations governing public charge determinations have been in place since the 1990s. These rules include a test by which it is determined whether immigrants applying for a change in immigration status will likely be primarily dependent on government assistance. The current test considers use of public cash benefits such as Temporary Aid for Needy Families (TANF), Supplemental Security Income, and long-term institutional care at government expense.<sup>1</sup> The proposed rule significantly expands the scope of the public charge test to

include non-cash public benefits including Medicaid, Medicare Part D low-income subsidies, Supplemental Nutritional Assistance Program (SNAP), and low-income housing assistance programs (e.g., the Section 8 Housing Choice Voucher Program).<sup>2</sup> *LHPC respectively opposes the public charge proposed rule in its entirety due to the negative health and community impacts that would result if the regulations are made final. As such, we urge DHS to withdraw the rule. However, if DHS chooses to finalize this proposed rule, we implore the Department to remove the inclusion of Medicaid from the list of programs defined as a “public benefit.”*

Additionally, DHS requested commenters to provide input regarding whether the rule should include CHIP in the list of benefits to be considered in the public charge test. The inclusion of CHIP in public charge determinations would significantly impede access to care for low-income children and have long-term negative effects on their health outcomes. Therefore, *LHPC strongly recommends that DHS not add CHIP to the list of programs defined as a “public benefit.”*

**Detrimental Impacts on Health Care Access and Outcomes.** Over the past five years California has lowered the rate of uninsured residents from 17% to 7.3%.<sup>3</sup> This is in large part due to implementation of the Affordable Care Act (ACA) and the state’s Medicaid expansion. There are currently over 13 million low-income Californians receiving health care services through the Medi-Cal program, including nearly 5.5 million children.<sup>4</sup> The public charge proposed rule would undo this progress and result in reduced access to care and poorer health outcomes.

While DHS estimates disenrollment from public programs as a result of the rule, these estimates are conservative and likely significantly below the number of individuals who will be affected by the regulations. A recent study published by the UCLA Center for Health Policy Research and UC Berkeley Labor Center provides information about the rule’s anticipated “chilling effect.” The “chilling effect” is program disenrollment due to confusion, fear, and misinformation. The report estimates that the rule would result in between 317,000 and 741,000 individuals disenrolling from the Medi-Cal program.<sup>5</sup> This reduction would decrease access to critical health care delivered by local health plans to Medi-Cal enrollees, such as preventative services, maternity and newborn care, and prescription drugs.<sup>6</sup> Health care coverage is associated with improved health outcomes, further demonstrating the need for continued access to care.<sup>7</sup>

**Increases in Uncompensated Care.** Reduced access to health care coverage and preventative services will also lead to increases in uncompensated care. The hundreds of thousands of individuals who are likely to disenroll from Medi-Cal due to the public charge rule will no longer have their health care needs met through routine and preventative services and instead would be forced to rely on hospital emergency rooms for care when a condition is no longer manageable. A recent study by Manatt shows that in California alone, the “chilling effect” could decrease Medicaid and CHIP payments to hospitals by over \$20.7 billion.<sup>8</sup> This decrease in care and associated payments to hospitals would be followed by an increase in uncompensated care, thus reversing the downward trend of the past five years.<sup>9</sup>

**Harmful Effects on Children and Youth.** The proposed rule will particularly impact children’s access to critical services necessary for healthy development. One analysis estimates that the “chilling effect” will result in Medicaid/CHIP disenrollment of 700,000 to 1.7 million children

who have medical needs and are living with a noncitizen adult.<sup>10</sup> Among this population are children who need medical care for life-threatening conditions, children who are on prescribed medications, newborns, and children with musculoskeletal and rheumatologic conditions.<sup>11</sup> In addition to jeopardizing the care of children with medical needs, youth without health insurance are less likely to receive critical vaccinations.<sup>12</sup>

**Stunted Progress on Improving Social Determinants of Health.** There is growing evidence that health is significantly shaped by factors such as housing, education, and access to healthy food. These factors are commonly referred to as social determinants of health, or “the conditions in which people are born, grow, live, work and age” (Artiga & Hinton, p. 1).<sup>13</sup> Recognizing the role that social determinants play in health outcomes, California’s local health plans are investing in community programs that impact the health of individuals and the community. These investments build upon access to other public benefits including SNAP and federal housing subsidies. By reducing access to supports such as healthy food and safe housing, the public charge rule will negatively impact the long-term health outcomes of the recipients of these programs. This is particularly true for children, who need a safe and healthy environment to succeed in school and adulthood.

**Negative Economic Consequences.** If the proposed rule is made final, the drastic disenrollment from public programs will also have detrimental impacts on the economy. Analysis conducted by the UCLA Center for Health Policy Researching and UC Berkeley Labor Center shows that California could lose up to 17,700 jobs if even just 35% of the population affected by the “chilling effect” chooses to disenroll from Medi-Cal or CalFresh (California’s SNAP).<sup>14</sup> Approximately 8,400 (57%) of the jobs lost would be in the health care sector. This is an example of another serious unintended consequence of the proposed rule.

Lastly, in the preamble to the proposed rule DHS states that the primary benefit of the rule would be, “to help ensure that aliens who apply for admission to the United States, seek extension of stay or change of status, or apply for adjustment of status are self-sufficient” (p. 51118).<sup>15</sup> Health care coverage and access supports an individual’s ability to maintain employment, thus the inclusion of Medicaid enrollment in public charge determinations runs counter to the expectation of self-sufficiency. A recent analysis found that nearly two thirds of non-elderly, non-disabled adults enrolled in Medicaid are employed, and the majority of these individuals reporting working full time.<sup>16</sup> If the public charge rule is finalized and rates of insurance increase, many of these individuals’ jobs may be threatened due to lack of access to care and poorer health.

Thank you for the opportunity to provide comment on DHS’ public charge proposed rule. Due to the significant and numerous negative impacts that would result if the rule is finalized, we urge DHS to withdraw it entirely.

Respectfully,



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Chief Executive Officer  
Local Health Plans of California

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<sup>1</sup> *Public Charge Fact Sheet*. April 2011. U.S. Citizenship and Immigration Services. Accessed via: <https://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet>

<sup>2</sup> *Inadmissibility on Public Charge*. October 2018. U.S. Citizenship and Immigration Services, Department of Homeland Security. 8 CFR §212.21(b).

<sup>3</sup> *SHADAC analysis of the American Community Survey (ACS) Public Use Microdata Sample (PUMS) files, State Health Compare*. SHADAC, University of Minnesota, [statehealthcompare.shadac.org](http://statehealthcompare.shadac.org). Accessed via: <http://statehealthcompare.shadac.org/trend/11/health-insurance-coverage-type-by-total#0/6/10/6,7,8,15/21>

<sup>4</sup> *Medi-Cal Monthly Enrollment Fast Facts*. September 2018. California Department of Health Care Services, Research and Analytic Studies Division. Accessed via: [https://www.dhcs.ca.gov/dataandstats/statistics/Documents/Fast\\_Facts\\_May\\_2018\\_ADA.pdf](https://www.dhcs.ca.gov/dataandstats/statistics/Documents/Fast_Facts_May_2018_ADA.pdf)

<sup>5</sup> Ponce, N., Lucia, L., Shimada, T. November 8, 2018. *How Proposed Changes to the 'Public Charge' Rule will Affect Health, Hunger, and the Economy in California*. The UCLA Center for Health Policy Research. Accessed via: <https://healthpolicy.ucla.edu/newsroom/Documents/2018/public-charge-seminar-slides-nov2018.pdf>

<sup>6</sup> *What are the Medi-Cal Benefits?* California Department of Health Care Services Essential Health Benefits. Accessed via: [https://www.dhcs.ca.gov/services/medi-cal/Pages/Medi-Cal\\_EHB\\_Benefits.aspx](https://www.dhcs.ca.gov/services/medi-cal/Pages/Medi-Cal_EHB_Benefits.aspx)

<sup>7</sup> Antonisse, L., Garfield, R., Rudowitz, R., Artiga, S. March 2018. *The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review*. Kaiser Family Foundation. Accessed via: <https://www.kff.org/medicaid/issue-brief/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review-march-2018/>

<sup>8</sup> Mann, C., Grady, A., Orris, A. November 2018. *Medicaid Payments at Risk for Hospitals Under the Public Charge Proposed Rule*. Manatt. Accessed via: <https://www.manatt.com/Insights/White-Papers/2018/Medicaid-Payments-at-Risk-for-Hospitals-Under-Publ>

<sup>9</sup> *ibid*

<sup>10</sup> Zallman, L., Finnegan, K., Himmelstein, D., Woolhandler, S. October 2018. *Changing Public Charge Immigration Rules: The Potential Impact on Children Who Need Care*. California Health Care Foundation. Accessed via: <https://www.chcf.org/publication/changing-public-charge-immigration-rules/>

<sup>11</sup> *ibid*

<sup>12</sup> *Access to Primary Care*. Office of Disease Prevention and Health Promotion. Accessed via: <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/access-to-primary#17>.

<sup>13</sup> Artiga, S., Hinton, E. May 2018. *Beyond Health Care: The Role of Social Determinants in Promoting Health and Health Equity*. Kaiser Family Foundation. Accessed via: <http://files.kff.org/attachment/issue-brief-beyond-health-care>

<sup>14</sup> Ponce, N., Lucia, L., Shimada, T. December 2018. *Proposed changes to immigration rules could cost California jobs, harm public health*. The UCLA Center for Health Policy Research. Accessed via: <https://www.universityofcalifornia.edu/news/proposed-changes-immigration-laws-would-cost-california-jobs-harm-public-health>

<sup>15</sup> *Inadmissibility on Public Charge*. October 2018. U.S. Citizenship and Immigration Services, Department of Homeland Security.

<sup>16</sup> Garfield, R., Rudowitz, R., Musumeci, M., Damico, A. June 2018. *Implications of Work Requirements in Medicaid: What Does the Data Say?* Kaiser Family Foundation. Accessed via: <https://www.kff.org/medicaid/issue-brief/implications-of-work-requirements-in-medicaid-what-does-the-data-say/>