

April 22, 2022

Samantha Deshombres
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, C 20529-2140

***RE: Notice of Proposed Rulemaking; Public Charge Ground of Inadmissibility,
DHS Docket No. USCIS-2021-0013, (Vol. 87, No. 37, February 24, 2021)***

Dear Ms. Deshombres:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, our clinician partners — including more than 270,000 affiliated physicians, two million nurses and other caregivers — and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) appreciates the opportunity to provide comments in response to the Department of Homeland Security’s (DHS) proposed rule to codify standards and clarify policies that govern public charge determinations. Public charge determinations assess how likely it is that an individual will become dependent on government assistance (public benefits) for support and subsistence. These policy clarifications are intended to help immigrants and their family members better understand when the use of certain public benefits could impact their future immigration status and address the “chilling effects” of the now-repealed 2019 public charge final rule.

The AHA supports DHS’s efforts to clarify policies regarding how public charge determinations are made to help reverse the damaging effects of the repealed 2019 public charge rule. Specifically, we expect that the proposed rule’s policy will help address the “chilling effect” of the 2019 rule. The “chilling effect” is a well-documented phenomenon where immigration-related policies affect Medicaid participation among legal immigrants and their families with the result that otherwise



eligible individuals and families either drop Medicaid coverage or choose not to apply for fear of jeopardizing their current or future immigration status.¹

At the time the 2019 rule went into effect, estimates suggested that as many as 13.2 million people could be at risk for losing coverage because of the “chilling effect.”² Another study in 2020 showed that the mere announcement of restrictive immigration and public benefit policies had a significant effect on children of legal immigrants’ access to critical public benefit programs such as Supplemental Nutrition Assistance Program (SNAP) and Medicaid during the early months of the COVID-19 pandemic.³

The AHA participated in several court cases as amicus curiae challenging the 2019 final rule⁴ and supported the current Administration’s repeal of that rule. We appreciate that this proposed rule clarifies that most forms of Medicaid, food assistance benefits (like SNAP), and subsidized housing would not be defined as a public benefit. In addition, disaster assistance, pandemic assistance, benefits received via a tax credit or deduction, or Social Security, government pensions, or other earned benefits would also not be considered public benefits in public charge determinations. **The AHA supports excluding these forms of public assistance for purposes of public charge determinations and believes these clarifications will address the confusion and uncertainty for legal immigrants and their families wrought by earlier policies. Furthermore, the AHA recommends that DHS develop clear messaging for stakeholders, such as hospitals, health systems, and other community members, to help communicate these policy changes to the communities they serve in an effort to help mitigate the “chilling effect.”** Hospitals and health systems have long served as leaders in their communities by connecting individuals and families to needed public programs.

Other problematic policies contributing to the “chilling effect” from the repealed 2019 rule were requirements that legal immigrants submit evidentiary support for each factor (referred to as “statutory minimum factors”), such as family status, assets, financial status, education, and skills. That policy, now repealed, further required that in assessing public charge determinations each factor be assigned a positive or negative association. In the proposed rule, DHS states that all factors would be considered when making public charge determinations and no weighting criteria nor positive or negative association for a specific factor would be imposed. **The AHA supports DHS’s proposed policies regarding how the statutory minimum factors are to be considered as well as the department’s intent to issue further guidance on the use of statutory factors based on the best available data.**

¹ Mann, C; Grady, A; Orris, A; “Medicaid Payments at Risk for Hospitals Under the Public Charge Proposed Rule” Manatt Health, November, 2018 <https://www.manatt.com/Manatt/media/Media/PDF/White%20Papers/Medicaid-Payments-at-Risk-for-Hospitals.pdf>

² Ibid.

³Barofsky, A; Vargas, A; Rodriguez, D; Barros, A; “Spreading Fear: The Announcement Of The Public Charge Rule Reduced Enrollment In Child Safety-Net Program;” Health Affairs 39, No 10 (2020)

⁴ [Microsoft Word - Hospitals Motion to File Amicus Brief 4829-1294-8133 v.1.docx \(aha.org\)](#)

Ms. Deshommes

April 22, 2022

Page 3 of 3

Hospitals and health systems are acutely aware of how access to health care coverage helps individuals and families maintain their health and remain productive members of the community. The COVID-19 pandemic has only underscored how critical access to health coverage and services are to ensuring healthy communities. The fears of jeopardizing one's immigration status by accessing public benefits like Medicaid or CHIP will only lead to forgone care, including pregnant women going without prenatal care, young children going without essential vaccinations or individuals suffering from chronic health conditions going without needed medications. **The AHA commends DHS's efforts to dismantle barriers for our immigrant communities to seek basic needs such as food, housing and health care services through this proposed rule.**

Thank you for your consideration of our comments. Please contact me if you have questions or feel free to have a member of your team contact Molly Collins Offner, director of policy, at mcollins@aha.org or (202) 626-2326.

Sincerely,

/s/

Stacey Hughes
Executive Vice President