MASSACHUSETTS Health & Hospital ASSOCIATION

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Samantha Deshommes
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

Re: CIS No. 2499–10; DHS Docket No. USCIS–2010–0012, Proposed Changes to Department of Homeland Security rules governing Inadmissibility on Public Charge

Dear Ms. Deshommes:

The Massachusetts Health and Hospital Association, on behalf of our member hospitals, health systems, physician organizations, and allied health care providers, appreciates the opportunity to submit comments in strong opposition to the proposed rule that will establish new criteria in the government's immigration status determinations related to whether an immigrant may likely become a "public charge" based on the use of public benefits.

MHA serves as the unified voice for Massachusetts hospitals in public advocacy with both state and federal government. Our members include 71 licensed hospitals and their healthcare systems. The frontline caregivers MHA represents provide medically necessary care for all members of our communities in their time of need. When providing services, hospitals and healthcare providers do not discriminate on the basis of race, color, national origin, citizenship, alienage, religion, creed, sex, sexual orientation, gender identity, income, age, or disability. For a variety of reasons outlined in this letter, we are very concerned with the direct and indirect negative consequences that the proposed public charge rule will have on the health and welfare of the communities that hospitals serve.

MHA is opposed to many aspects of the proposed rule as we believe that the new criteria the Department of Homeland Security (DHS or Department) is proposing will have a devastating effect on immigrants in need of medically necessary care – including those that the rule does not intend to affect. By expanding the definition of public benefits to include health coverage programs, and by specifying a low-income component in DHS's process for determining whether an individual will likely become a "public charge", we believe many low-income immigrants – including legal residents – will be directly discouraged from enrolling in Massachusetts health coverage programs. This will have a number of negative consequences in Massachusetts, including an increase in the number of uninsured, residents forgoing preventative and medically necessary care, overuse of emergency departments, and increased patient bad debt and hospital uncompensated care. The effect will extend well beyond the health of individual

patients to affect public health and the overall stability of the healthcare system. Legal immigrants working at our hospitals will be particularly affected adversely, harming healthcare workforce productivity. For these reasons, detailed more fully below, we respectfully request the Department reconsider its proposed rule.

EXPANDING DEFINITION OF PUBLIC CHARGE

Massachusetts hospitals and healthcare providers are very concerned that the proposed rule will dissuade thousands of low-income Massachusetts residents from seeking health coverage. DHS proposes that an individual's need of certain health coverage benefits now be a factor in determining whether to approve immigrants seeking to legally live in the United States or obtain legal status through a green card (as well other immigration statuses proposed in the rule). The new rule would encompass programs such as Medicaid and subsidies for Medicare prescription drug coverage. In addition, the proposed rule encompasses other low-income programs through its new evaluation, such as Supplemental Nutrition Assistance Program (SNAP) and federal housing assistance. The evaluation would also assign greater weight to a person's low-income status and whether the person had a medical condition requiring extensive treatment.

MHA strongly opposes the inclusion of Medicaid and Medicare Part D subsidies in the public charge criteria used for immigration status evaluations, as well as heavily weighting a medical condition as a factor of determination. For the past two decades, U.S. Citizenship and Immigration Services has defined public charge as relating to "(i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense."[1] This definition had been carefully considered by the federal government given that the same guidance recognizes that public charge "has deterred eligible aliens and their families, including U.S. citizen children, from seeking important health and nutrition benefits that they are legally entitled to receive. This reluctance to access benefits has an adverse impact not just on the potential recipients, but on public health and the general welfare."[2] We believe this concern was valid at the time and remains true now. An expansion of this definition to include healthcare benefits such as Medicaid will likely mean many immigrants will withdraw or forgo applying for health coverage programs. Worse, many may also forgo even seeking medical care if they believe it will be a potential negative factor in their future immigration status.

We also have serious concerns with the inclusion of SNAP and housing benefits, as well as the discriminatory nature and effect of weighting income in the evaluation process. The federal government, including the Centers for Medicare and Medicaid Services (CMS), recognizes that "unmet health-related social needs, such as food insecurity and inadequate or unstable housing, may increase the risk of developing chronic conditions, reduce an individual's ability to manage these conditions, increase health care costs, and lead to avoidable health care utilization." [3] The proposed inclusion of SNAP and federal housing support in the immigration

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[1] Immigration and Naturalization Service, Department of Justice, "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds [64 FR 28689] [FR 27-99]", May 26, 1999

[2] "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds [64 FR 28689] [FR 27-99]", May 26, 1999

[3] Accountable Health Communities Model, Centers for Medicare and Medicaid Services, https://innovation.cms.gov/initiatives/ahcm/

status evaluation process will have a negative influence on people seeking these needed supports and will ultimately lead to unfavorable health consequences.

CHILLING EFFECT ON HEALTH COVERAGE & OTHER PROGRAMS

Given the complexity of immigration law and statuses, the effect of the proposed change will very likely extend beyond the individuals affected by public charge rules. **In addition to our concerns with those directly affected by the proposed rule change, we are equally concerned for the many immigrants for whom the public charge rule does *not* apply. We believe the rules will create a fear that their own immigration status or that of a family member will be affected by their participation in federal or state programs, which will cause these immigrants to forgo or withdraw from health coverage programs.** Immigration statuses and rules are complex, making it difficult for individuals to understand whether these rules would apply to them. Also, a "family" can include members directly affected by the policy as well as those that are not, including U.S. born children. Many families will see this change as a choice between keeping their families whole or keeping them healthy. The chilling effect of this policy will ultimately suppress access to healthcare and coverage for every member of these families.

The consulting firm Manatt estimates the largest group to potentially be affected by the ramifications of this policy is not non-citizens, but citizen family members of a non-citizen. In total, Manatt reports that there are 4.4 million legal immigrants on Medicaid and the Children's Health Insurance Program (CHIP), whereas there are 8.8 million U.S. citizens on these programs who are family members of a non-citizen, with 75% of these citizens being children.[4] While a family member may be technically excluded from the public charge determination, the fear of potentially affecting a family member's immigration status will serve as a great deterrent to any and every member of the family from applying for health coverage. This is especially true in the Massachusetts Medicaid program known as MassHealth that requires parents applying for their children to include household income and other information on the application. The very fact that a non-citizen parent's information will be on an application for Medicaid or CHIP benefits for their child will dissuade many from applying at all even though the public charge rule is not intended to apply in such circumstances.

We also believe the proposed rule will suppress access to health coverage programs that the rule specifically exempts. While the rule excludes from the public charge criteria the use of state health exchange subsidies, emergency Medicaid benefits, school-based Medicaid benefits, and other Medicaid covered services such as those related to special education for disabled children, these technical nuances provide little to no safeguard against unintended consequences. **The overall fear of using Medicaid will extend to these Medicaid-like services, causing individuals in need to forgo important benefits they are entitled to under law. This repercussion will be all the more real in Massachusetts where our state uses a single application for most state health coverage programs, including full Medicaid benefits, emergency Medicaid benefits, and state subsidies on the state's health insurance exchange. This single application even determines eligibility for financial assistance for care provided**

[4] "Cindy Mann, April Grady, and Allison Orris, *Medicaid Payments at Risk for Hospitals Under Public Charge* (Manatt, November 2018) https://www.manatt.com/Insights/White-Papers/2018/Medicaid-Payments-at-Risk-for-Hospitals-Under-Publ

to low-income uninsured individuals at Massachusetts hospitals and community health centers. We use this one-door application approach to steer those seeking coverage into the most affordable and comprehensive insurance they are eligible for, rather than requiring individuals to apply through a variety of programs only to be redirected to another. The single application in our state has been a key factor in reducing the number of uninsured, making the application and enrollment process far more efficient and effective. If this new rule were to be finalized as drafted, it may require the creation of new applications for individual programs, which would significantly increase administrative burdens and costs for applicants, hospitals, and state government. This would work against our state's longstanding practice of simplifying the enrollment process for all residents and assigning them to the most appropriate health coverage programs.

Beyond health coverage programs, we are also concerned that many immigrants may withdraw from several critical programs that are not affected by the rule, including Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), school lunch programs, and worker's compensation programs. Similar to our concerns relating to health coverage, including critical community programs like Section 8 Housing Assistance and SNAP programs in the public charge definition will cause confusion and people withdrawing unadvisedly from programs to which they are entitled. This will particularly affect families with mixed households (e.g., families with immigrant parents and children who are natural-born citizens). As a result, families will withdraw from critical community services that keep people healthy, affecting the health and welfare of children, including those U.S. born. As stated earlier, stable housing and food security play important roles in the ability of people to recover and stay healthy. Increased malnutrition and homelessness will not only wreak havoc on these individuals' lives, but will result in higher costs to our healthcare system.

COST TO HOSPITALS: MORE THAN JUST FINANCIAL

Hospitals across the country, including those in Massachusetts, will experience significant financial losses as a result of this proposed rule. As mentioned, we believe the number of people that will forgo or withdraw from health coverage will be significant as it will extend beyond Medicaid and individuals that are subject to public charge rules.

First and foremost, this policy would result in a setback to the tremendous progress Massachusetts has made to expand health coverage over many years. In partnership with the federal government, our state has expanded health coverage to low and middle income residents through Medicaid and our state health insurance exchange, and has used innovative ways to support those who are ineligible for Medicaid for reasons such as immigration status. In 2017, the United States Census Bureau found that Massachusetts had the lowest percentage of people without health insurance in the country, with 97.2% of the state's population covered.[5] If this proposed rule were to take effect, the number of uninsured would undoubtedly increase.

With an increase in the uninsured comes with an increase in consumer medical debt and

[5] Edward R. Berchick, Emily Hood, and Jessica C. Barnett, *Health Insurance Coverage in the United States: 2017* (United States Census Bureau, September 2018) https://www.census.gov/content/dam/Census/library/publications/2018/demo/p60-264.pdf

hospital uncompensated care. As more immigrants decide to forgo direct services and benefits that they are entitled to, such as Medicaid and subsidized health insurance from the state exchange, it will result in reduced reimbursement to healthcare providers for medically care. It will also result in more acute level medical conditions that only can be treated within hospital emergency departments. This care will be more costly to provide than in community settings; without insurance coverage, many of these individuals will not be able to afford to pay for that care.

A further complication involves our state's mechanism for financing care provided to low-income uninsured patients. This requires individuals to effectively apply for Medicaid to determine if they are eligible for that program. If an individual is not eligible for Medicaid, care provided at hospitals and community health centers can be supported financially through a state-managed uncompensated care pool called the Health Safety Net. This program, which is primarily funded by hospitals and health insurance companies, uses a pooling concept so that hospitals that care for a disproportionate share of low-income uninsured patients are not overly burdened with uncompensated care. For care to qualify for this financing, low-income patients must be determined eligible for the Health Safety Net using the application that also applies for Medicaid coverage. **We believe many low-income immigrant families will resist even applying for this basic emergency hospital and health center assistance because of the link to Medicaid, even if they're not eligible for Medicaid or wish to apply for it.** This will leave hospitals alone to finance that care without further assistance, including federal Medicaid Disproportionate Share Hospital (DSH) funds which in Massachusetts are tied to the Health Safety Net program through an 1115 Medicaid Waiver. These losses will result in significant financial exposure for safety net hospitals and hospitals with a large concentration of immigrants in their communities.

Overuse of hospital emergency departments will also be expected, putting further strain and cost on hospitals. Hospital emergency departments in Massachusetts, like those in the rest of the nation, are experiencing increased boarding of patients who need acute level services. **The proposed rules will only increase patients seeking care in the emergency department with no ability to obtain coverage for follow up care. This will create greater barriers to accessing emergency level care for <u>all</u> residents - citizens and non-citizens.**

Many individuals with green cards and visas that would be affected by this proposed policy are also employed by hospitals. **Foreign-born employees make up a significant portion of the Massachusetts hospital workforce and contribute to patient care, operations, and research at healthcare facilities.** By forgoing care, immigrants will be unable to continue working and providing these services in a productive manner. Their ability to stay healthy is critical to hospital missions.

Hospitals also play key roles in helping individuals without insurance to enroll into health coverage programs and navigate through complex Medicaid eligibility rules. Their tasks will become much more burdensome and complicated with these new rules, putting further strain on limited resources dedicated to these services. The complexity of the public charge issue and its connection with healthcare will likely overwhelm hospital financial counselors and make it much more difficult to advise people on how to seek assistance on financing their care.

Healthcare application counselors will be challenged with understanding confusing immigration rules in addition to helping people find the coverage they need, including attempting to help those individuals not directly affected by the public charge rule.

PUBLIC HEALTH AND OTHER SOCIETAL IMPLICATIONS

The loss of health coverage will extend beyond the health of these individuals and those that care for them. In the proposed rule, DHS acknowledges a number of potentially adverse consequences, including increased emergency department use, increased prevalence of communicable diseases among members of the U.S. citizen population who are not vaccinated, increased rates of poverty and housing instability, and reduced productivity and educational attainment.[6] We wholeheartedly agree with these predicted outcomes. We reiterate them here as they should not be viewed as consequences of the rule, but as reasons to reconsider this policy itself.

Those that forgo vaccinations and medical treatment for contagious diseases will affect all those in their communities, resulting in increased illness, added costs, and reduced worker productivity. Hospitals facing financial losses due to increased uncompensated care will be forced to consider cutbacks in community benefits programs and preventive care services that improve the overall health of a community. This is particularly concerning as we, like other states, are in the midst of responding to an opioid use crisis that does discriminate based on immigration status. Financial challenges will also affect employment at hospitals, and facility investments for all patients. Inevitably, there will be attempts to shift some of these losses onto insurers and employers, contributing to increased health insurance premiums.

CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP)

DHS requests comments about whether the CHIP program should also be included in the expansion of the public charge definition. For the same reasons described above in detail, **MHA strongly opposes the inclusion of CHIP benefits in the rule**. The goal of the CHIP program is to ensure that families of low and moderate incomes can afford health coverage for their children. While immigrant children are able to access CHIP services, many recipients are also U.S. born citizen children of immigrant families. Including CHIP in the public charge will deter immigrant families from seeking coverage for their children who are eligible, lawfully present, and in many cases citizens.

The issue of CHIP is further complicated in Massachusetts since our state does not differentiate health coverage as Medicaid or CHIP. While these programs have separate federal financing arrangements and rules governing each, in our state the coverage falls under a single coverage offering called "MassHealth." A Massachusetts child or healthcare provider is likely unaware whether the coverage is financed by CHIP or Medicaid. This point further enforces our concern that the inclusion of Medicaid in the public charge benefit will cause those eligible for other programs such as CHIP to not enroll. MHA strongly believes that Medicaid and CHIP should not be included in the public charge criteria.

[6] *Inadmissibility on Public Charge Grounds*, U.S. Citizenship and Immigration Services, DHS (Proposed Rule, pg 51270, October 10, 2018.)

In summary, we hope you will give serious consideration to the concerns we have outlined and reconsider this proposed rule. We believe that many of the proposed changes will have a significant negative impact on immigrants' ability to access coverage and medically necessary care, including those that are not subject to the public charge rules. The ramifications will be widespread and felt beyond these individuals, affecting hospitals and society as a whole. Please feel free to contact me or Anuj Goel, MHA's Vice President of Legal & Regulatory Affairs, at agoel@mhalink.org / 781-262-6034 if you have any questions about our comments. We appreciate the opportunity to offer these comments and thank you for your attention to the issues we have raised.

Sincerely,

Steven M. Walsh
President & CEO
Massachusetts Health & Hospital Association