



October 31, 2019

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Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Visa Services
Bureau of Consular Affairs
Department of State
600 19th Street NW
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Re: Information Collection Title: Immigrant Health Insurance Coverage, DS Form Number DS-5541, OMB Control No. None, Proclamation No. 9945, 84 FR 53991 (Oct. 9, 2019); DOS-2019-0039-0001

To Whom It May Concern:

The District of Columbia Health Benefit Exchange Authority (HBX) appreciates your consideration of our comments on the above-cited Presidential Proclamation No. 9945 on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System.¹

By way of background, HBX is a private-public partnership established by the District of Columbia (District) to develop and operate the District's on-line health insurance marketplace, DC Health Link (DCHealthLink.com). We cover approximately 100,000 people -- District residents and people who work for District small businesses. DC Health Link fosters competition and transparency in the private health insurance market, enabling individuals and small businesses to compare health insurance prices and benefits and to purchase affordable, quality health insurance. Since we've opened for business, we have cut the uninsured rate by 50% and now nearly 97% of District residents have health coverage.

We strongly oppose Presidential Proclamation No. 9945 ("Proclamation") and request it be withdrawn in its entirety. The Proclamation will undermine the District's health insurance coverage gains and access to quality, affordable health care -- reversing years of progress. Additionally, the Proclamation contradicts existing federal law -- the Affordable Care Act (ACA), and its issuance is in violation of the Administrative Procedure Act (APA).

¹ Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System, No. 9945, Oct. 4, 2019. <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-suspension-entry-immigrants-will-financially-burden-united-states-healthcare-system/>.



The Detrimental Effect on Health Coverage

The Proclamation will adversely impact the District's private individual health insurance market and hurt District residents. The District is ranked second among all states for the lowest uninsured rate and in 2019, the District had the fifth lowest average individual market premiums in the country.² These gains are put at risk because the Proclamation:

1. Encourages prospective immigrants to purchase junk plans like short-term limited-duration insurance (STLDI);
2. Undermines the purchase of marketplace coverage by requiring health insurance coverage be secured before entry into the United States; and
3. Seems to change, making worse already problematic guidance recently finalized in the Public Charge rule issued by the Department of Homeland Security³ related to the purchase of subsidized private health insurance.

First, the Proclamation lists STLDI as approved coverage to meet the healthcare coverage requirements necessary for certain immigrants to enter the United States. As we noted in our comments to the Administration's rule on STLDI, these junk plans are exempt from consumer protections under the ACA applicable to individual health insurance.⁴ They exclude coverage for preexisting conditions, use medical underwriting to keep people with medical needs out, cap benefits using annual and lifetime dollar limits, and do not cover all of the benefits considered "essential" like mental health and maternity services. Even with these severe limitations, STLDI plans are specifically promoted under the Proclamation. Consequently, rather than protect the health care system and the American taxpayer from the "burdens of uncompensated care," as the Proclamation states, allowing prospective immigrants to purchase such junk plans as opposed to marketplace coverage will likely *increase* uncompensated care when immigrants need health care services not covered under these junk plans. For the District of Columbia, actuaries from Oliver Wyman estimate that individual market claims cost will increase by as much as 21.4% from the proliferation of junk plans. The Proclamation's policy puts secure quality health insurance coverage of District residents (citizens and noncitizens) at risk.

Second, the Proclamation further undermines the purchase of marketplace coverage by requiring coverage prior to entry. Specifically, while the Proclamation contemplates that unsubsidized private health insurance coverage obtained through a marketplace (like DC Health Link) would qualify as meeting health coverage requirements for entry into the U.S., it fails to recognize the practical difficulty, if not impossibility, of establishing such coverage while abroad. Under the ACA and related regulations, an individual applying for private health insurance coverage through a Marketplace must show proof of residency in a U.S. state or territory as well as lawful presence to become eligible for such coverage.⁵ A person applying for entry into the U.S. by definition does not yet have lawful presence.

² Centers for Medicare & Medicaid Services. 2019 Marketplace Open Enrollment Period Public Use Files. https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Marketplace-Products/2019_Open_Enrollment.html

³ U.S. Department of Homeland Security. Final Rule. "Inadmissibility on Public Charge Grounds," 84 Federal Register 41292, 41299 (Aug. 14, 2019).

⁴ Comment on Short-Term, Limited-Duration Insurance- CMS-9924-P from Mila Kofman, Executive Director of D.C. Health Benefit Exchange Authority to Dept. of Health and Human Services, Centers for Medicaid and Medicare Services, April 19, 2018. https://hbx.dc.gov/sites/default/files/dc/sites/hbx/publication/attachments/DC_HBX_Comment_CMS_9924-P.PDF.

⁵ U.S.C. § 18032(f); 45 C.F.R. 155.305(a).

Third, this Proclamation and the recent Department of Homeland Security Public Charge rule seem to be at odds with respect to the effect of enrolling in subsidized private health insurance coverage (private insurance with tax credits).⁶ While the Proclamation states that the visa applicant must be enrolled in unsubsidized coverage, the Public Charge rule views all private coverage (including subsidized private coverage) positively in the asset/resources analysis.⁷ Importantly, while we oppose the anti-immigrant policies reflected in the Proclamation and the Public Charge Rule, we expect consistency in standards used. The Proclamation adds further confusion and increases the Public Charge Rule's chilling effect.

Contradictory to the ACA

The Proclamation directly conflicts with provisions of the ACA that provide immigrants access to marketplace coverage.

Current federal law, as established by the ACA, allows lawfully present individuals, both immigrants and non-immigrants, to purchase subsidized health insurance coverage through health insurance exchanges.⁸ In the ACA, Congress specifically exempted recent immigrants from the 100 percent federal poverty level floor on eligibility for premium tax credit subsidies because they are not eligible for Medicaid due to their recent immigration status.⁹ Thus the Proclamation's requirement that immigrants acquire unsubsidized coverage is akin to amending the ACA without Congress. In other words, the Proclamation is restricting the ACA subsidized coverage provision under 26 U.S.C. §36B(c)(1)(B) ("Special rule for certain individuals lawfully present in the United States") to only apply to immigrants already here. And over time as this pool of people becomes smaller, there will be zero enrollment under §36B(c)(1)(B). The Administration does not have authority to amend the ACA.

Contrary to the APA

The two-day comment period violates the APA. The President is requiring the State Department to use a new standard for issuing visas. The Proclamation requiring the new standard is therefore a rule under the APA. The APA provides the public an opportunity for review and input to agencies with respect to rules and rule changes. The two-day comment period does not meet the comment period and the Proclamation does not meet rule-making process required by the APA for policy changes.

Conclusion

We ask that the Proclamation be withdrawn in its entirety.

Sincerely,



Mila Kofman
Executive Director
DC Health Benefit Exchange Authority

⁶ *Supra*, note 3.

⁷ *Id.*

⁸ 26 U.S.C. §18032(f)(3).

⁹ 26 U.S.C. §36B(c)(1)(B) ("Special rule for certain individuals lawfully present in the United States").