



November 12, 2019

Visa Services
Bureau of Consular Affairs
Department of State
600 19th Street NW
Washington, DC 20006

Re: Inadmissibility on Public Charge Grounds - Docket No. DOS–2019 0035

To Whom It May Concern:

The District of Columbia Health Benefit Exchange Authority (HBX) appreciates your consideration of our comments on the above-cited Interim Final Rule (IFR).

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We strongly oppose the IFR and request it be withdrawn in its entirety. The IFR according to the preamble, is "intended to align the Department's standards with those of the Department of Homeland Security, to avoid situations where a consular officer will evaluate an alien's circumstances and conclude that the alien is not likely at any time to become a public charge, only for the Department of Homeland Security to evaluate the same alien when he seeks admission to the United States on the visa issued by the Department of State and finds the alien inadmissible on public charge grounds under the same facts."¹

The grounds for HBX's opposition to the IFR are the same as those expressed in our comments submitted on December 10, 2018 to the DHS Notice of Proposed Rulemaking (NPRM) related to Public Charge standards².

¹ U.S. Department of State. Interim Final Rule. "Inadmissibility on Public Charge Grounds," 84 Federal Register 54996, 54996 (Oct. 11, 2019).

² U.S. Department of Homeland Security. Notice of Proposed Rulemaking. "Inadmissibility on Public Charge Grounds," 83 Federal Register 51114, 51270 (Oct. 10, 2018).



As acknowledged in the preamble to the DHS NPRM, the new interpretation of the Public Charge statute would have far-reaching negative impacts on public health and on U.S. citizens and Lawful Permanent Residents who are not subject to the public charge test. These detrimental effects – as cited in DHS’ preamble -- include:

- Worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence;
- Increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment;
- Increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated;
- Increased uncompensated care in which a treatment or service is not paid for by an insurer or patient;
- Increased rates of poverty and housing instability; and
- Reduced productivity and educational attainment.³

The Chilling Effect on Health Coverage

The IFR 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.⁴ All of these gains are put at risk by the chilling effect that the IFR will have on individuals and families seeking and retaining health coverage.

While the DHS NPRM acknowledged the well-documented “chilling effect” that this regulation could have on immigrants, the IFR completely lacks such analysis. It also fails to acknowledge the effect on family members who are not subject to the Public Charge test but nonetheless fear applying for benefits because they believe it will impact their family members applying for a visa overseas.

The “chilling effect” concern is not theoretical but is based on similar outcomes with other programs. According to a Manatt Health analysis, a total of 41.1 million people (12.7% of the U.S. population) could be subject to the public charge test or otherwise impacted by the test because they are in a family unit with someone subject to the test.⁵ Based on experiences following passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the “chilling effect” will extend to additional populations not directly covered by the regulation. Medicaid enrollment by refugees dropped by 33% following passage of that law, even though refugees were not impacted by the changes contained in it.⁶ Similarly, according to a study conducted by the U.S. Department of Agriculture, enrollment in SNAP between 1994 and 1997 fell by 54% for legal permanent residents and

³ Id. at 51270 (Oct. 10, 2018).

⁴ 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/MarketplaceProducts/2019_Open_Enrollment.html

⁵ Manatt Health. Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard. New York, NY; 2018. <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population>.

⁶ Fix M, Passel J. Trends in Noncitizens’ and Citizens’ Use of Public Benefits Following Welfare Reform. Urban Institute; 1999. <https://www.urban.org/research/publication/trends-noncitizens-and-citizens-use-public-benefits-following-welfare-reform>.

by 37% for U.S. citizen children who lived with an immigrant parent.⁷

People Will Drop Health Coverage, The Uninsured Rate Will Increase, and Premiums for Insured Residents will Increase

If finalized, the policy contained in the IFR will hurt District residents. We already saw some residents not enrolling in health coverage during open enrollment because of the fear of the DHS proposed Public Charge rule created when it was published on October 10, 2018 – just prior to the 2019 open enrollment period.

Increasing uninsured rates has severe economic and health consequences to both the uninsured person and people with insurance. The IFR will lead to people dropping or foregoing health coverage and will hurt non-U.S. citizens and citizens alike. For example according to a study prior to the ACA, the leading cause of personal bankruptcy was a medical condition.⁸ Also, research has found a consistent link between lack of insurance and premature death. According to the Institute of Medicine (IOM), lack of insurance increases the risk of dying by 25 percent.⁹ And in 2009 researchers estimated that approximately 45,000 uninsured people died preventable deaths.¹⁰ And according to an IOM 2002 study, the uninsured problem cost the U.S. economy between \$65 billion and \$130 billion annually in lost productivity.¹¹ Also, insured families paid an extra \$1,017 annually in premiums to pay for some of the uncompensated care.¹²

Legal Concerns

Aside from being bad public policy that will harm public health and access to health coverage, multiple federal courts have indicated the interpretation outlined in the IFR has a strong likelihood of being contrary to the Immigration and Naturalization Act's statutory scheme and inconsistent with other federal laws.¹³ As such, it violates the Administrative Procedure Act. On this basis, DHS's Public Charge Final Rule, which was set to go into effect on 10/15/19, is subject to multiple preliminary injunctions.¹⁴ Although these injunctions are specific to DHS's Public Charge Final Rule, because the IFR adopts the DHS Final Rule's content and rationale, just like the DHS rule, the IFR is contrary to legal authority and unenforceable. For the reasons stated in these rulings, the State Department must withdraw the IFR.

⁷ Genser, J. "Who is Leaving the Food Stamp Program: An Analysis of Caseload Changes from 1994 to 1997." Washington, DC: U.S. Department of Agriculture, Food and Nutrition Service, Office of Analysis, Nutrition, and Evaluation; 1999. <https://fns-prod.azureedge.net/sites/default/files/cdr.pdf>.

⁸ "Medical Bankruptcy in the United States, 2007: Results of a National Study," D. Himmelstein, D. Thorne, E. Warren, S. Woolhandler, American Journal of Medicine. August 2009.

⁹ Institute of Medicine. Care Without Coverage, Too Little, Too Late. Washington, DC: The National Academies Press; 2002.

¹⁰ "Health Insurance and Mortality in U.S. Adults" A. Wilper et. al., American Journal of Medicine. December 2009.

¹¹ Institute of Medicine. Hidden Costs, Value Lost: Uninsurance in America. Washington, DC: The National Academies Press; 2003.

¹² FamiliesUSA. "Hidden Health Tax: Americans Pay a Premium". May 2009.

https://familiesusa.org/sites/default/files/product_documents/hidden-health-tax.pdf

¹³ See e.g. *New York v. United States Dep't of Homeland Sec.*, No. 19 CIV. 7777 (GBD), 2019 WL 5100372 (S.D.N.Y. Oct. 11, 2019); *Washington v. United States Dep't of Homeland Sec.*, No. 4:19-CV-5210-RMP, 2019 WL 5100717 (E.D. Wash. Oct. 11, 2019); *City & Cty. of San Francisco v. U.S. Citizenship & Immigration Servs.*, No. 19-CV-04717-PJH, 2019 WL 5100718 (N.D. Cal. Oct. 11, 2019).

¹⁴ *Id.*

If the State Department does not withdraw the IFR, the Department must at a minimum publish a new notice in the *Federal Register* that enforcement of the IFR is suspended. The State Department rationalized the IFR by stating a need for consistent policy between the State Department and DHS.¹⁵ As long as the DHS Public Charge Rule is under an injunction, enforcement of the IFR must similarly be suspended.

Conclusion

We strongly oppose the IFR and urge you to withdraw it.

Sincerely,



Mila Kofman
Executive Director
DC Health Benefit Exchange Authority

¹⁵ Supra n.1