The Commonwealth of Massachusetts
Commonwealth Health Insurance Connector Authority
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December 10, 2018

Ms. 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, D.C. 20529-2140
ATTN: DHS Docket Number USCIS-2010-0012

Re: Notice of Proposed Rulemaking, "Inadmissibility on Public Charge Grounds" (Published in Federal Register Volume 83, Number 196 on October 10, 2018)

Dear Chief Deshommes:

The Massachusetts Health Connector ("Health Connector"), a state-based health insurance Marketplace authorized under the Patient Protection and Affordable Care Act of 2010 ("ACA"), appreciates the opportunity provided by the Department of Homeland Security ("DHS") to comment on the proposed rule, "Inadmissibility on Public Charge Grounds."[1]

The Commonwealth of Massachusetts, including the Health Connector, is opposed to the proposed rule and strongly advises that the proposed rule be withdrawn. The Commonwealth of Massachusetts values the immigrant community's role in making our state a vibrant and competitive commonwealth and believes the proposed changes to the public charge rule would harm these interests by discouraging lawful Massachusetts residents from accessing basic supports such as medical care and other programs intended to help lawful immigrants to build economic self-sufficiency.

[1] 83 FR 51114 at www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf.

The Health Connector was created as part of Massachusetts's state-level bipartisan health reform law and is designed to connect Massachusetts residents with high quality, affordable health coverage and to promote universal health coverage in the Commonwealth. The Health Connector is a health insurance exchange and administers the sale of health insurance, in some cases subsidized with federal Advance Premium Tax Credits (APTC), to income-eligible individuals, including both citizens and lawfully present residents. Through over a decade of effort and close collaboration with local insurance carriers, health care providers, business leaders, and consumer groups, we have been successful in this mission: the Commonwealth has a nation-leading health insurance rate of 97%,[2] we are ranked the healthiest state in the nation,[3] and we have the lowest-cost average Marketplace premiums in the country.[4] The proposed rule would undermine our state's ability to further this mission and threaten the gains our state has made to secure near-universal health coverage.

The Health Connector opposes the proposed extension of the public charge doctrine to public health coverage programs because of the likelihood that the proposed rule would undermine the state's traditional role in managing the health and welfare of its citizens and lawfully present residents. While we note that the proposed extension of the public charge rule does not directly affect Advance Premium Tax Credits, which are the federally subsidized health benefits available through the Health Connector, for the reasons we outline below, we anticipate the rule would indirectly threaten the health insurance security of the households of up to 60,000 lawfully present Health Connector insureds, which in turn could destabilize our commercial insurance market.[5]

The proposed changes would represent a dramatic departure from the public charge approach DHS has taken for two decades. That approach sensibly recognizes the valuable role of health insurance benefits in allowing lawfully present immigrants to stay healthy so that they may fully contribute to their families, communities, and states. We urge DHS to reverse its current course, which dispenses with this proven policy and instead puts health coverage through the Health Connector at risk for thousands of Massachusetts residents and threatens to destabilize our insurance market and our state's historic and proven approach to health coverage.

We respectfully offer the following specific comments relating to the proposed rule.

A. DHS should withdraw the proposed rule, or at minimum, significantly revise the proposed rule to clarify that Medicaid, Medicare Part D subsidies, and other health coverage programs are not affected by the public charge doctrine.

The Health Connector has significant concerns about the rule's proposal to extend public charge determinations to Medicaid and Medicare Part D subsidies for the following reasons.

1. <u>Although the proposed rule does not include use of Advance Premium Tax Credits (APTCs) through ACA Marketplaces in a determination of public charge, inclusion of other types of health benefits will result in fewer eligible individuals enrolling in Marketplace coverage.</u>

The Health Connector is concerned that although its own applicants and enrollees are not subject to a public charge determination under the proposed rule, many of these individuals will be deterred

[2] U.S. Census Bureau, at www2.census.gov/programs-surveys/demo/tables/p60/264/table6.pdf.
[3] *See* www.mass.gov/news/massachusetts-named-healthiest-state-in-the-nation.
[4] Analysis of CMS Public Use Files, at www.cms.gov/CCIIO/Resources/Data-Resources/marketplace-puf.html.
[5] Health Connector analysis of member data, on file.

from applying for or enrolling in Marketplace coverage due to the close relationship between Medicaid and Marketplaces at a state level.

Federal law requires that ACA-compliant Marketplaces such as the Health Connector offer a "single streamlined application" to determine eligibility for Marketplace plans and affordability assistance (such as APTCs) and Medicaid.[6] As a result, Massachusetts, like certain other states, has developed an application and enrollment system that is jointly administered by the Health Connector and the state's Medicaid agency. Federal regulations do not allow an individual to apply only for APTCs or only for Medicaid; an application for one must be an application for both. In keeping with the governing federal laws, applicants for health coverage in Massachusetts experience a virtually seamless process; they apply for Medicaid, CHIP, and Marketplace financial assistance using a uniform application portal, and are subsequently determined eligible for the appropriate program.

Because of this required design, many lawfully present immigrants may not know that receipt of benefits from the Health Connector and Medicaid are treated differently under the proposed rule. In fact, the preamble of the proposed rule and early implementation forms[7] appear to suggest that Medicaid applicants—rather than just Medicaid recipients—could be swept up by public charge determinations. As a result, if the proposed rule is adopted, eligible lawfully present immigrants are likely to forgo applying for *all* health programs available from our unified application portal, even though participation in Health Connector and CHIP programs would carry no consequence under the proposed revision to the public charge rule.

We expect this chilling impact to be exacerbated by the fact that many of the Health Connector's enrollees are in households with individuals eligible for Medicaid or Medicare Part D subsidies, such as pregnant women, children, or elderly parents. These families may well withdraw from health programs wholesale in an effort to avoid negative impacts of the proposed rule on the immigration status of some household members. The Health Connector estimates that as many as 60,000 of its enrollees could be impacted by the rule as a result of these household-level decisions.

There is ample historical evidence to suggest that this chilling impact will occur in significant numbers. In study after study, changes to immigration policies have an outsized impact on public program take-up because of fear and confusion in the immigrant community. Given this, the Health Connector expects the proposed rule would lead to a significant downturn in enrollment among otherwise-eligible immigrants, even though they may not be directly impacted by the proposed rule. This will have serious negative consequences for the well-being of these lawful Massachusetts residents and for our state as a whole.

2. <u>The proposed rule's treatment of health program enrollment among immigrant communities and resulting chilling effect will erode significant coverage gains made under state health care reform efforts.</u>

In 2006, Massachusetts enacted a landmark package of health care reforms, including state subsidy programs for low- and moderate-income individuals, as well as a state-level individual mandate to have health insurance. Massachusetts currently leads the nation in health insurance coverage among its residents at 97%, which is the result of decades of work, even pre-dating our 2006 reform

[6] 45 CFR 155.405.

[7] See DHS Form I-944, "USCIS Instructions for Declaration of Self-Sufficiency," Item No. 9, Application for or Receipt of Public Benefits.

law. The highly restrictive federal polices DHS has proposed significantly alter the incentives and disincentives for families as they contemplate enrolling in coverage. This will undermine the Commonwealth's hard-won progress over the past 12 years to ensure all lawful residents have access to affordable health care and prevent the Commonwealth from maintaining its steady and high insurance rate.

Under the proposed rule, the Commonwealth would need to re-evaluate fundamental elements of its successful health reform framework in a way that could lead to declines in the level of insurance for Commonwealth residents as a whole. For example, the Commonwealth has maintained a requirement for over a decade that all adults have access to health insurance if affordable. If the proposed rule were finalized, it would impede the Commonwealth's ability to maintain this requirement for those individuals who could be placed at risk of adverse immigration consequences as a result of accessing coverage.

Similarly, the chilling effect in enrollment resulting from the proposed rule could diminish the Health Connector's long-standing role as a competitive marketplace available to nearly all Massachusetts residents. Reducing enrollment in Health Connector coverage undermines its ability to empower all Commonwealth consumers to shop for insurance in a competitive, transparent fashion. The Health Connector is the conduit to health insurance for over 260,000 Massachusetts residents—roughly 80% of all individuals who buy non-group (or individual market) coverage in the state. On behalf of its members, the Health Connector is able to procure high-quality plans at competitive premiums in a way that individual enrollees are not situated to do. Federal policies that deter consumers from enrolling in Marketplace coverage weaken the collective impact of individual market purchasers, yielding a less competitive insurance market for all.

3. <u>Reductions in insurance coverage stemming from the proposed rule would significantly harm the public health of Massachusetts residents</u>.

Massachusetts has pursued universal health coverage for the last 30 years because each individual enrolled in coverage makes everyone healthier.[8] Individuals with health insurance are more likely to receive preventive care such as vaccinations. Coverage expansions such as those Massachusetts enacted in 2006 help to ensure that traditionally underserved populations have access to care.[9] In addition to allowing individuals to access care when they need it, the security of having health insurance improves self-reported physical and mental health status.[10] In the face of compelling evidence linking insurance with public health, it is troubling that DHS would even consider adopting a rule that, in its own analysis, DHS admits could lead to:

- *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;*

[8] Sommers, B. D., Gawande, A.A., and Baicker, K. (2017). Health Insurance Coverage and Health—What the Recent Evidence Tells Us. N Engl J Med 2017; 377:586-593DOI: 10.1056/NEJMsb1706645.
[9] Centers for Disease Control and Prevention. (2010). Short-Term Effects of Health-Care Coverage Legislation – Massachusetts 2008. MMWR 2010; 59:9.
[10] Van Der Wees PJ, Zaslavsky AM, Ayanian JZ. Improvements in health status after Massachusetts health care reform. Milbank Q 2013; 91: 663-89.

- *Increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated;*
- *Increases in 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.*[11]

Given these stated outcomes, it is unclear how DHS has concluded that the proposed rule will increase self-sufficiency for immigrants lawfully present in the United States. Rather, it seems designed to undermine the ability of individuals to better their health and the health and economic vitality of their communities.

4. <u>The remaining insured individuals—citizens and immigrants alike—are likely to face increased premiums as the result of fewer individuals enrolling in coverage.</u>

The Health Connector anticipates that disenrollment related to the rule will have ripple effects that extend broadly throughout the commercial insurance market.

It is important that DHS recognize that lawfully present immigrants have been proven to be more likely to represent "favorable" insurance risk, because they are younger, healthier, or lower-than-average utilizers of health care services when compared to the general insured population. Several studies have concluded that immigrants are net contributors to both private coverage and Medicare, paying more in insurance premiums than they receive in benefits.[12] Similarly, the Health Connector's own data demonstrates that its immigrant enrollees, on average, have 25% lower medical claims than its citizen members, a variance attributable both to the lower age of immigrant enrollees as well as lower utilization of medical services.[13] As a result, declines in take-up or retention of immigrant coverage related to the proposed rules could have an impact on the overall risk pool—in turn leading to commercial market premium increases for citizens and immigrants alike.

The risk that the public charge rule could increase commercial market premiums is particularly widespread in Massachusetts, because of our unique "merged market" structure. In Massachusetts, individuals and small businesses share a risk pool, insurance products, and premiums. As a result, changes to the Health Connector's individual enrollment can extend to a broader pool that includes Massachusetts's small business community, potentially increasing premiums across the board.

5. <u>Financial insecurity and negative health impacts caused by a lack of health insurance will harm immigrants as well as the economy overall.</u>

Individuals without health insurance have more absences from work, and delaying preventive or chronic condition care often results in higher health care costs in the future.[14] Research by the Federal Reserve Bank found that, in addition to improving labor market participation, Massachusetts's health care reforms decreased personal debt and increased credit scores among

[11] At 51270 of the proposed rule.
[12] Zallman, L., Woolhandler, S., Touw, S., Himmelstein, D.U., and Finnegan K.E. (2018). Immigrants pay more in private insurance premiums than they receive in benefits. Health Affairs 2018 37:10, 1663-1668.
[13] Health Connector analysis of claims data.
[14] Davis, K. (2003). The Costs and Consequences of Being Uninsured. The Commonwealth Fund. Available at https://www.commonwealthfund.org/sites/default/files/documents/___media_files_publications_in_the_literature_2003_jun_the_costs_and_consequences_of_being_uninsured_davis_consequences_itl_663_pdf.pdf.

state residents.[15] Similarly, Oregon's lottery system for Medicaid eligibility demonstrated that Medicaid coverage significantly reduced out of pocket spending, medical debt, and skipped payments, and virtually eliminated catastrophic expenses, all while significantly reducing depression among recipients.[16] Stabilizing a household's finances makes members less likely to need any public programs, whether considered in a determination of public charge or not. It also enables the household to more fully participate in local economies, which is a benefit to everyone.

Just as individuals with new access to insurance found greater job mobility and increased opportunities to start their own businesses under Massachusetts health care reform, the economy also saw growth in employment in the health care sector, benefitting individuals who may have already had health insurance.[17]

A reduction in the rate of insurance coverage threatens the financial well-being not only of the newly uninsured, but also health insurance issuers and health care providers who would experience enrollment instability, adverse selection, and increased rates of uncompensated care under the proposed rule, respectively. In the City of Boston alone, for example, a study estimates that the proposed rule would result in $3.8 to $15 million in uncompensated care costs for Boston hospitals each year.[18] Moreover, many of the immigrants enrolled in health coverage through the Health Connector choose carriers and providers with a long-standing commitment to underserved populations. As a result, any disenrollment from coverage resulting from the proposed rule may have a disproportionate and destabilizing impact on certain health care businesses that are critical to our local economy and health care system.

B. If DHS proceeds with the proposed rule, the rule must not infringe upon states' rights to advance the economic stability of their residents, nor expend states' limited resources.

In the event that DHS proceeds to finalize a rule change of the sort proposed notwithstanding the negative consequences likely to follow, the Health Connector offers the following comments:

1. <u>DHS should not expand the proposed rule to include Marketplace or CHIP affordability assistance as a "public benefit" considered as part of a public charge determination.</u>

While the Health Connector has significant concerns with the proposed rule because of the impacts outlined above, we note DHS' decision to exclude certain health coverage affordability programs from the newly proposed public charge determination criteria. Specifically, we support DHS continuing to exclude federal APTCs, federal Cost-Sharing Reductions (CSRs), Children's Health Insurance Programs (CHIP), and any other federal, state, or municipal program not specifically enumerated in the rule from the determination of public charge.[19]

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[15] Mazumder, B. and Miller, S. (2015). The effects of the Massachusetts health reform on financial distress. Federal Reserve Bank of Chicago Working Paper, 2014 (01). Available at https://www.chicagofed.org/publications/working-papers/2014/wp-01.

[16] Baicker K, Taubman SL, Allen HL, et al. (2013). The Oregon experiment — effects of Medicaid on clinical outcomes. N Engl J Med 2013; 368:1713-22.

[17] Blue Cross Blue Shield of Massachusetts Foundation. (2016). 10 Years of Impact: A Literature Review of Chapter 58 of the Acts of 2006. Available at https://bluecrossmafoundation.org/publication/10-years-impact-literature-review-chapter-58-acts-2006.

[18] Boston Planning and Development Agency. (2018). Impact of Proposed Federal Immigration Rule Changes on Boston: Public Charge Test for Inadmissibility. Available at: www.bostonplans.org/getattachment/e856c564-bf0f-47d4-9a44-75b430903f82.

[19] See Sections V(B)(2)(f) and (g) of the preamble to the proposed rule, at 51173.

There are two reasons why DHS must maintain this stance in any final rule:

- First, federal programs such as APTCs, CSRs, and CHIP allow lawfully present immigrants an opportunity to gain greater economic opportunity and mobility. These programs are designed to phase down gradually as an individual's income grows, allowing individuals to maintain continuous coverage while moving from lower-wage/entry-level status to middle-income status. Excluding these programs from the rule meets DHS' stated interest in improving self-sufficiency.
- Second, state and municipal health programs allow localities to independently meet the needs of their residents, including critical public health needs. These local programs have no bearing on federal immigration policy and are protected by the Tenth Amendment's traditional reservation of health, safety, and welfare power to the states. Excluding these programs from the rule meets DHS' stated focus on federal programs.

2. <u>DHS should clarify that a uniform application for unaffected public programs which incidentally includes affected programs does not trigger a public charge review.</u>

In addition to continuing to exclude Exchange programs such as APTCs from public charge consideration, DHS should clarify the interaction between applications for Exchange programs and other potentially impacted benefits. As noted above, the Health Connector and other Marketplaces are required by law to feature a uniform application process for Medicaid and non-Medicaid health programs. This could cause confusion, because an individual attempting to apply for Exchange insurance and programs could inadvertently be seen as a "Medicaid applicant."

As a result, any final rule must clarify that the mere application for an affected benefit such as Medicaid will not trigger a public charge review—only the receipt of such benefits. It is our interpretation that this would be the case in practice even under the proposed rule, given the benefit duration/quantity standards outlined in the proposed rule, but we would appreciate clarification of this point.

3. <u>DHS should eliminate the significant burden the proposed rule imposes on states, which attempts to commandeer state resources to achieve federal immigration policy goals.</u>

More generally, the Health Connector is troubled by the implication in the proposed rule that state and municipal benefits-granting agencies should participate in furthering the goals of the rule by notifying immigrants of public charge consequences.[20]

Since 2014, the Health Connector has operated under a federal legal framework in which lawfully present immigrants were not only encouraged to apply for health programs to which they are entitled, but were also assured that doing so would not impact their public charge determination. For example, as of the date of publication of the proposed rule in the Federal Register, the federal Healthcare.gov website indicated, "*Applying for Medicaid or CHIP, or getting savings for health insurance costs in the Marketplace, doesn't make someone a public charge. This means it won't affect their chances of becoming a Lawful Permanent Resident or U.S. citizen*."[21] In reliance on this framework, the Health Connector has constructed eligibility and enrollment systems, policies and

[20] See Sections (V)(B)(2)(i) of the preamble to the proposed rule, at 51174.
[21] www.healthcare.gov/immigrants/lawfully-present-immigrants/, accessed on 10/11/2018.

procedures, relationships with immigrant communities and those who work with them, and communications pathways that facilitate application and enrollment of eligible individuals regardless of their specific lawfully present status.

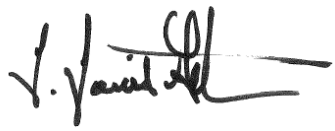
The proposed rule suggests that in furtherance of its policies, benefits-granting agencies should assume the burden and cost of modifying systems and notices to facilitate benefit termination for certain lawfully present immigrants subject to public charge. If the Health Connector were to assume this duty, it could cost the state millions of dollars to: (1) modify the joint Medicaid-Health Connector application to warn applicants of public charge consequences; (2) modify its reporting systems to better identify enrollees at risk of public charge; (3) modify its notices to warn select enrollees of public charge consequences, and then assume the cost of sending such notices; and (4) provide customer service support to individuals with questions about public charge consequences.

This constitutes an unacceptable burden on states. Under the Tenth Amendment's anti-commandeering doctrine, the federal government may not force participation of states in the administration of a federal program. If DHS proceeds with adopting the rule, it must include provisions describing how the federal government will assume the responsibility of proactively communicating with lawfully present immigrants about the potential consequences of public charge—up to and including sending advance notice to affected individuals upon receipt of benefits that could trigger a public charge determination if received for a sufficient duration or in a sufficient amount. DHS must not rely on states for administration of this harmful proposed rule.

In conclusion, immigrants are a vital part of the Massachusetts's economy, and vital participants in the state's long-standing approach to health policy. By adopting policies that could lead to a decline in participation in health care programs, DHS would fray the fabric of the insurance compact Massachusetts has taken great pains to foster over the last 30 years. All Massachusetts residents stand to lose as a result of this proposed rule.

We thank you for consideration of our comments.

Sincerely,



Louis Gutierrez
Executive Director