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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: Comments on Inadmissibility on Public Charge Grounds Rule Docket No. USCIS-2010-0012

Dear Ms. Deshommes:

The Commonwealth of Massachusetts and the Massachusetts Medicaid (MassHealth) and CHIP program (MassHealth) are opposed to the Department of Homeland Security's proposed public charge rule and strongly advise that the proposed rule be withdrawn. The Baker-Polito Administration values the immigrant community's role in making Massachusetts a vibrant and competitive commonwealth. The Administration believes DHS's proposed rule would cause individuals and families who are lawfully present in the Commonwealth to cease accessing programs intended to provide support for basic needs like food assistance and medical care. This would create unacceptable costs both for the individuals directly affected and for the Commonwealth of Massachusetts as a whole.

MassHealth provides comprehensive, affordable health coverage to approximately 1.8 million residents of the Commonwealth, including approximately 40% of all Massachusetts children and 60% of all residents with disabilities. MassHealth's mission is to improve the health outcomes of our diverse members, their families and communities by providing access to integrated health care services that sustainably promote health, well-being, independence and quality of life. As a national leader in innovations to expand and improve coverage, MassHealth was one of the first Medicaid programs approved to expand Substance Use Disorder (SUD) services, and one of a handful to

ambitiously implement new Accountable Care Organizations to promote coordinated, value-based care. Approximately 264,000 MassHealth members have a noncitizen immigration status. This includes 52,000 children, 6,000 of whom are enrolled in the Children's Health Insurance Program (CHIP).

MassHealth strongly opposes the proposed public charge rule both in principle and for its easily anticipated negative impact on public health, the health care system, the MassHealth program, and the economy of Massachusetts, as detailed below.

The Rule Would Reduce Coverage and Harm Public Health

Massachusetts has the highest health insurance rate and is ranked the healthiest state in the country.[1] The proposed rule runs contrary to Massachusetts' approach to expanding coverage and would undermine the work that has led to these achievements.

Historical and contemporary evidence lead us to expect a substantial "chilling effect" that will extend beyond residents who are subject to the rule and lead to potentially significant reductions in the number of noncitizens applying for or remaining enrolled in MassHealth. Many of them will go uninsured, increasing their risk of illness and mortality.[2]

The best available estimate suggests that 500,000 or more immigrants across the Commonwealth could be affected by the proposed new rule.[3,4] The proposed rule's expansiveness, complexity and discretionary nature, coupled with more than a year of public debate of potentially even broader public charge definitions, will lead to confusion over program eligibility, concern about the potential of deportation, and fear that citizen children's use of benefits could be negatively weighted. Notably, MassHealth has an integrated Medicaid and CHIP program, with approximately 6,000 noncitizen children currently enrolled in CHIP. Many families are unaware that their children are enrolled in CHIP as opposed to Medicaid and that participation in CHIP will not be weighed as a negative factor in the public charge determination under the new rule. As a result, eligible families will likely lead eligible CHIP recipients to decline coverage notwithstanding the proposed exclusion. This will result in diminished health outcomes for these eligible families and increased, long-term costs to public health in Massachusetts.

In fact, federal regulation requires that Medicaid applications be unified with state health exchanges and CHIP applications, which Massachusetts has implemented through our integrated HIX eligibility system.[5] Consequently, under the proposed rule, lawfully present immigrants in Massachusetts would actually have no way to apply for health exchange and CHIP benefits without being penalized for applying to Medicaid. This would likely lead many immigrants who are eligible or whose citizen children are eligible for coverage through the Massachusetts Health Connector or CHIP to avoid

[1] United Health Foundation. (2017). America's Health Rankings: 2017 Annual Report. Retrieved from https://assets.americashealthrankings.org/app/uploads/2017annualreport.pdf

[2] Sommers, B.D., Baicker, K., Epstein, A.M. (2012). Mortality and Access to Care Among Adults After State Medicaid Expansions. *New England Journal of Medicine*, 367:1025-1034. doi:10.1056/NEJMsa1202099

[3] Manatt. (2018) Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard. Retrieved from https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard

[4] Wagman, N. (2018). A Chilly Reception: Proposed Immigration Rule Creates Chilling Effect for New Immigrants and Current Citizen. Retrieved from the Massachusetts Budget and Policy Center website: http://www.massbudget.org/report_window.php?loc=A-Chilly-Reception-Proposed-Immigration-Rule.html

[5] 45 CFR 155.405

applying altogether for fear of jeopardizing their immigration prospects. In addition, individuals eligible for Medicaid are not eligible for subsidized exchange coverage so such coverage would not be an option for them.

Most immigrants who choose to avoid applying for coverage or to disenroll from MassHealth will be left uninsured or underinsured. Many noncitizen members are eligible for MassHealth because they are children, are pregnant, or have a disability, precisely because those groups are a coverage priority from a medical and developmental perspective. The anticipated coverage declines will therefore likely lead to disproportionate morbidity in this already vulnerable population, including increased rates of infant mortality. Furthermore, many of the same noncitizen members who disenroll from MassHealth will for like reasons simultaneously disenroll from other health-related benefits such as SNAP and Section 8, potentially worsening their health status further. Indeed, DHS acknowledges that the rule will result in higher rates of uninsurance, reduced use of primary care, delayed treatment, and "worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children."[6]

The rise in uninsurance under the rule will cause Massachusetts to face greater costs and hurdles in managing public health challenges and will particularly hinder our efforts to address the opioid epidemic. The Commonwealth has committed to investing nearly $420 million over five years through our Section 1115 Demonstration to expand access to SUD treatment. This rule will roll back SUD access for the immigrant community, undermining the joint federal and state investment and the Commonwealth's work on this priority issue. The rule will also induce more immigrants to forgo immunizations or viral suppression treatment, driving up rates of infectious disease. We can therefore reasonably expect that a near certain outcome of the proposed rule will be an increase in morbidity and mortality among MassHealth members and across the Commonwealth, reaching far beyond the population subject to the proposed rule.

The Rule Burdens the MA Healthcare System

Under the proposed rule, MassHealth anticipates a significant increase in uncompensated care across the Commonwealth. Ample evidence leads us to expect that when immigrants disenroll from health coverage, uncompensated care rates will rise and will shift from less expensive preventive and primary care to more costly acute and emergency care. Simultaneously, immigrant disenrollment from other health-related social benefits may further drive up uncompensated care costs. Indeed, low-income adults participating in SNAP incur about $1,400, or nearly 25%, less in medical care costs in a year than low-income non-participants.[7]

The financial burden of providing this uncompensated care will be born disproportionately by safety net providers that provide crucial access for MassHealth members, including hospitals and community health centers, threatening their fiscal sustainability. As uncompensated care expands, the demand on state programs that compensate providers for such care will increase. While it is difficult to estimate the cost of this uncompensated care, we can predict that Massachusetts

[6] Page 51270 of the proposed rule.

[7] Berkowitz, S.A., Seligman, H.K., Rigdon, J. (2017). Supplemental Nutrition Assistance Program (SNAP) Participation and Health Care Expenditures Among Low-Income Adults. *JAMA Internal Medicine*, 177(11):1642-1649. doi:10.1001/jamainternmed.2017.4841

hospitals stand to lose approximately $457 million in Medicaid and CHIP funding as a result of the proposed rule's chilling effect.[8]

In addition to expanding uncompensated care, the rule will likely reduce the Commonwealth's health care workforce capacity. One in five health care workers in Massachusetts is an immigrant.[9] Immigrants' vital role in the health care sector is particularly evident in certain regions, such as the Boston area, where immigrants make up 29% of hospital staff and 53% of home health aides.[10] DHS acknowledges that the proposed rule may result in a loss of immigrant productivity and educational attainment, and increased poverty, as immigrants disenrolling from health-related programs may become too sick to work and others who choose not to disenroll may have their legal work statuses denied when they seek status adjustment.[11] These impacts would exacerbate the nursing and home health worker shortage already facing the Commonwealth. Moreover, immigrant-led households in Massachusetts paid $6.5 billion in federal taxes and $3 billion in state and local taxes in 2014.[12] The proposed rule would therefore weaken the Massachusetts health care system on two fronts- by increasing uncompensated care and by reducing state resources to provide that care as immigrant workers fall out of employment and cease to contribute as tax payers.

The rule would also undermine the goals of MassHealth's recent restructuring. The federal government has partnered with MassHealth through a Section 1115 Demonstration to pursue an innovative shift toward Accountable Care Organizations (ACOs), which are financially accountable for managing population health and total cost of care. In order to succeed under this new structure, providers participating in ACOs must invest in initiatives to promote care coordination, integrate medical and behavioral health care, and connect members with social services. The proposed rule would weaken the impact and effectiveness of this restructuring by raising uninsurance rates, forcing ACO providers to funnel resources toward providing uncompensated care rather than toward the initiatives needed to ensure success under the ACO model.

In summary, the rule would decrease health coverage and shift the burden of payment from a federal/state partnership onto providers and states, while reducing the state health care workforce and tax base. For the reasons explained above, these effects on the health care system will have a pronounced detrimental impact on MassHealth providers and members and on residents across the Commonwealth.

<u>The Rule Undermines Access to School-Based Medicaid While Claiming to Preserve Such Access</u>

The proposed rule states that School-Based Medicaid, including services provided to children with Individualized Education Plans (IEPs) will not be considered as public benefits for purposes of the public charge rule, even though Medicaid benefits (other than emergency Medicaid) are public benefits for purposes of the public charge rule. This distinction misunderstands the applicable

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[8] Mann, C., Grady, A., Orris, A. (2018) Public Charge Proposed Rule: Hospital Medicaid Payments at Risk. Retrieved from https://www.manatt.com/insights/newsletters/health-update/public-charge-proposed-rule-hospital-medicaid

[9] Altorjai, S. and Batalova, J. (2017). Immigrant Health-Care Workers in the United States. Retrieved from the Migration Policy Institute website: https://www.migrationpolicy.org/article/immigrant-health-care-workers-united-states

[10] Osterman, P., Kimball, W., Riordan, C. (2017) Boston's Immigrants: An Essential Component of a Strong Economy. Retrieved from the JVS Center for Economic Opportunity website: https://www.jvs-boston.org/wp-content/uploads/2017/11/Osterman-Report-Final.pdf

[11] Page 51270 of the proposed rule.

[12] New American Economy. (2016) The Contributions of New Americans in Massachusetts. Retreived from: http://research.newamericaneconomy.org/wp-content/uploads/2017/02/nae-ma-report.pdf

Medicaid scheme. School-Based Medicaid is not a standalone category of Medicaid. Only children who are enrolled in comprehensive Medicaid are eligible for School-Based Medicaid. As a result, while the rule purports to preserve access to School-Based Medicaid – any child that received Medicaid would have that Medicaid counted as a public benefit. This is likely to confuse local educational agencies (LEAs), resulting in efforts to enroll children in Medicaid for the purpose of claiming School-Based Medicaid and creating risk to the immigration status of children and their families. Moreover, while the proposed rule purports to preserve crucial Medicaid funding LEAs now receive to support special education services, in fact, LEAs will experience reduced funding for the special education services they provide to immigrant children.

The Rule is an Unfunded Mandate

Implementing the rule would require MassHealth and other Medicaid agencies to undertake significant and costly systems and operational modifications. The scope of necessary modifications will depend on the data reporting requirements in the rule, which are unclear as currently written.

Even in the absence of more detailed reporting requirements, MassHealth can reasonably expect that considerable systems and operations modifications will be needed to achieve compliance and provide appropriate notice to applicants and members. Form I-944, Declaration of Self-Sufficiency, which DHS proposes to use for public charge determinations, would require immigrants to report whether they have ever applied for or received one of a certain list public benefits and to provide detailed information about the amount and timeline of that benefit.[13]To assist our members, MassHealth will need to develop new procedures to provide immigrant members with this information. This will require building out new Customer Service and operational workflows, as well as constructing new data report protocols to pull benefit information for the particular immigration statuses and for the particular programs subject to the rule. The accurate parsing of this member data will be crucial to avoid noncompliance with the rule on the one hand and unduly penalizing members on the other, and may require modifications to MassHealth's eligibility and information management systems. For example, the categories of immigrants included and excluded from the rule do not correlate with MassHealth's immigration status codes. New codes may need to be built in to properly identify members who would potentially be subject to the rule. Such changes would need to be replicated across MassHealth's various eligibility and claims systems.

In addition to modifications to achieve reporting compliance, MassHealth would need to undertake resource-intensive outreach to members and providers to alert them of the rule, including eligibility system modifications to ensure applicants are aware of the potential immigration consequences at the time of application. If the rule moves forward, MassHealth anticipates increased call volume and demand on its Customer Service Centers as members attempt to understand whether and in what way they will be impacted, request disenrollment, and seek benefit information for immigration applications. This surge in volume will likely lead to increased costs for interpreter services, and may require increased customer service staffing levels. MassHealth expects to incur costs to develop new trainings and policies for customer service and eligibility staff, as well as for Certified Application Counselors and Navigators, to ensure they are adequately prepared to address member questions about the rule.

[13] Retrieved October 10, 2017 from: https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds

The Rule Allows Excessive Discretion in the Public Charge Determination

MassHealth also believes that the public charge determination process proposed in the rule is overly broad and speculative. The rule permits the denial of visas and status adjustments based not only on an applicant's use of benefits, but on the prospective determination that an immigrant may be "likely at any time in the future to receive one or more" public benefits. Therefore, though the rule enumerates specific factors to negatively weight, the ultimate decision is based on a DHS official's subjective assessment of the immigrant. MassHealth questions the notion that DHS can accurately determine whether an applicant is likely to become primarily dependent on the government for subsistence. There is no objective basis upon which to determine whether any particular individual will fall ill or become impoverished. Moreover, prospectively concluding that an individual is destined to become a public charge undermines the fundamental American ideal that any person has the potential to rise above their circumstances.

Even for cases in which an immigrant is currently "primarily dependent" on public benefits, MassHealth objects to penalizing immigrants for receiving benefits to which they are entitled. We believe public benefits are a crucial safety net for families and a step up for immigrants on their way to economic stability. These are services that make it possible for parents to feed their children dinner and breakfast, that keep children immunized and cancer patients in treatment, and that provide families a safe place to sleep instead of their car or a bench. Participating in such programs does not make one unfit to be an American. Quite to the contrary: on the criteria advanced in the proposed rule, at least 40% of American citizens would not pass the public charge test and would therefore be inadmissible to their home country and otherwise ineligible for permanent residence or eventual citizenship.[14]

State Recommendations

For the reasons detailed above, MassHealth urges DHS to withdraw the proposed rule.

Should DHS decline to withdraw the proposed rule, MassHealth urges DHS to exclude the use of health care benefits, as access to good health care is fundamental to any person's ability to work, go to school and contribute to society. In particular, MassHealth urges that any final form of the rule exclude CHIP and all other benefits that children may receive. Ample public health evidence suggests that adequate housing, nutrition, and health care makes a child more likely to be self-sufficient as an adult, not less.[15,16] Expanding childhood hunger, housing insecurity, uninsurance, and poverty is not only adverse to the Commonwealth as a whole, but will lead to greater costs over the long term, as much of an individual's health and educational trajectory are established during childhood.

We also recommend that any form of a public charge rule ultimately adopted expand the set of immigration statuses that are not subject to the public charge determination, in order to avoid

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[14] Kaiser Family Foundation. (2016). Distribution of Total Population by Federal Poverty Level. Retrieved from: https://www.kff.org/other/state-indicator/distribution-by-fpl/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D

[15] Gundersen, C. and Ziliak, J.P. (2015). Food Insecurity and Health Outcomes. *Health Affairs.* (34)11, 830-1839. https://doi.org/10.1377/hlthaff.2015.0645

[16] Moore, T.G., McDonald, M., Carlon, L. O'Rourke, K. (2015). Early childhood development and the social determinants of health inequities, *Health Promotion International* (30) sup2, 102–115. https://doi.org/10.1093/heapro/dav031

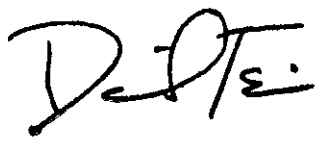
arbitrary distinctions. For example, the rule excludes benefit receipt of active duty service members, so should likewise exclude benefit receipt of veterans. Additionally, we propose that the rule not negatively weight application for public benefits that did not result in an applicant receiving public benefits, for reasons discussed above related to regulatory requirements for unified Medicaid and health exchange applications. MassHealth also recommends clarification in the rule's language regarding data reporting requirements. Finally, we recommend that any rule implemented have an effective date no earlier than January 1, 2023. This would allow time to complete any operational and systems modifications necessary for compliance.

Conclusion

MassHealth can confidently predict that the proposed rule would have sustained and long-term negative consequences for MassHealth member health, the provider system, and the Massachusetts economy as a whole based on historical experience with similar policy changes and evidence-based projections. The rule would undermine MassHealth's nationally leading delivery reform and substance use disorder treatment efforts, and hamper our ability to ensure affordable, high quality care for our members. In effect, the rule would threaten the Commonwealth's right to shape its own health care system and maintain its strong economy.

For the reasons detailed above, MassHealth respectfully urges DHS to withdraw the proposed rule change. MassHealth and the Commonwealth of Massachusetts appreciate the opportunity to comment on this proposed rule and look forward to continuing to work with the Administration to strengthen and improve the Medicaid program. Thank you for consideration of these comments.

Sincerely,



Daniel Tsai
Assistant Secretary for MassHealth

Cc: Secretary Marylou Sudders