New York State NURSES ASSOCIATION One strong, united voice for nurses and patients

Comments of the New York State Nurses Association Opposing the Proposed Regulations on Inadmissibility on Public Charge Grounds

Proposed Rule, Dept. of Homeland Security, 8 CFR Parts 103, 212, 213, 214, 245 and 248

DHS Docket No. USCIS – 2010-0012 – Inadmissibility on Public Charge Grounds

This submission is made by the New York State Nurses Association (NYSNA), a union and association of 42,000 frontline nurses in New York State established in 1901. NYSNA nurses are strongly committed to providing vital health care to our patients and our communities. As licensed professional nurses, we have a legal and ethical obligation to protect the public's health. The proposed regulations will strip health care from millions of our patients and disrupt the financial stability and viability of hospitals and other vital health care providers in furtherance of an ill-conceived and punitive policy that makes no sense as a matter of immigration policy and will undermine the viability of critical public health and safety net infrastructure.

The rule on "Inadmissibility on Public Charge Grounds," put forward by the U.S. Department of Homeland Security ("DHS") in 8 CFR Parts 103, 212, 213, 214, 245 and 248 (https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds) flies in the face of long-established precedent and practice to safeguard the well-being of immigrants here and those seeking to come to the U.S.

Specifically, it is clear to NYSNA that the purported reduction of "total costs" estimated by DHS as the principal underpinning for the proposed rule is inaccurate, short sighted and serves only to support a misguided and dangerous political anti-immigrant, anti-labor and anti-healthcare agenda.

Access to quality healthcare, nutritional assistance and decent housing helps to keep the immigrant workforce that is the subject of the proposed rule healthy and productive, reduces long term expenditures on health care and other public assistance benefits, and ultimately strengthens the U.S. economy overall and the health care industry in particular. The fact of the matter is that the immigrant population being targeted by these proposed punitive measures is a highly productive segment of our workforce and merits support on this basis alone.

Indeed, according to the data produced by the DHS itself, the rates of usage of public assistance benefits, including Medicaid health care coverage by immigrants is the same or lower than that of the general population of citizens, leading us to suspect that the proposed regulations are in fact a

back door attempt to reduce Medicaid services and coverage for the broader population under cover of attacking immigrants.

This approach is politically cynical, threatens to undermine the public health of all Americans, violates any sense of humanitarian principle, and for these reasons NYSNA strongly condemns the proposed rule and urges its rejection.

The current public charge law

The proposed rule affects any person who applies to enter the U.S., any persons who are here and seek to adjust their status to become a green card holder (Lawful Permanent Resident), and any persons who already hold a green card and seek to renew their current status. Under current and long-standing law, an individual who is "likely to become a public charge" may be denied entry or lose their right to continued permanent residence in the U.S. (Refugees and sales are excluded, but those who are immediate relatives of U.S. citizens are not). In making the public charge determination, officials analyze the *totality of a person's circumstances* in deciding whether or not they are likely to become a public charge—including their age, health, family status, financial resources, education and skills.[1]

Under current policy, only the use of cash assistance was included in the public charge test—i.e., whether or not individuals had accessed Supplemental Security Income or Temporary Assistance for Needy Families. Those were considered negative factors in applying for permanent residency under current law and regulation.[2]

The new rule

The proposed rule adds several new standards that immigration officials must use when weighing whether or not an immigrant is likely to become a public charge. Immigrants earning less than 125% of the federal poverty level ($31,375 for a family of four) would be given a negative weight on their application, while the rule weighs income over 250% of the poverty level ($63,000 for a family of four) as "heavily positive." The rule also gives negative weight to children, seniors, persons with limited English, and those with limited education.[3] However, it should be noted that immigrants earning low wages (often at or near the federal poverty level) are a significant segment of the U.S. workforce and significantly enhance national output. In other words, while they may be poorly paid, they are neither a drain on the economy nor on the federal budget. This false assumption undercuts the proposed rule.

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[1] https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/

[2] Protecting Immigrant Families Public Charge Analysis: https://docs.google.com/document/d/1FMcQYbV4DWPa9bPQn63oQVJkbkRqxe5dRmjjVFi0Ifg/edit

[3] Ibid.

The rule also broadens which benefits are to be considered in the public charge test. It adds non-emergency Medicaid, the Medicare Part D Low-Income Subsidy Program (which helps the elderly afford prescription drugs), food stamps, and several housing programs. The rule also weights as heavily negative if you have a medical condition that is likely to require extensive treatment and are not privately insured but instead rely on Medicaid coverage.[4]

The enormous benefit of immigrants in the U.S. economy

Immigrants are job makers, not job takers. They build the U.S. economy and to suggest that they are a net drain defies the facts.

While immigrants make up 13% of the overall US population, they over-represent their contributions to the economy by fulfilling 15% of the national economic output. Additionally immigrant participation in the labor force has actually *improved* wages and job opportunities overall for US citizens.

Immigration has been a tremendous force for innovation and entrepreneurship in the US.
50% of billion-dollar companies in the US were founded by an immigrants. Each of these, on average, create 760 new jobs.

A full 25 % of all new businesses in the US are started by immigrants; and these businesses have experienced 60% increase in wages over the last decade.

Immigrants contribute significantly more into social services than they use

Immigrants contribute more in taxes and social services than they receive in individual benefits, and their contributions help fund much needed public infrastructure and social services that all Americans benefit from. These contributions more than offset the social service expenditures stated in the proposed rule.

From 2002-2009, for example, immigrants paid in over $115 billion more than they took out of Medicare; and from 2005 until 2080, immigrants will have contributed over $600 billion to help fund Social Security.[5]

Implications for health coverage for immigrants

It is further argued that persons covered by the proposed rule utilize Medicaid and other government services in such a way as to drain the federal budget. This assumption is not borne out or supported by the facts.

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[4] https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/

[5] Ironically, if the July 2017 proposal to reduce net immigration over the next decade were to be carried through, the remaining population would have to balance the resulting $200+ billion Social Security deficit by paying more in taxes.

Recent studies have shown that average healthcare expenditures for native-born Americans versus immigrant Americas can exceed 2 to 1. Insured immigrants also accounted for less spending, accounting for 52% lower expenses than insured U.S.-born citizens.

Despite these realities, immigrants that rely on public programs like Medicaid are about to be put at risk and forced a make a choice between accessing affordable health care and their resident status under the proposed rule.

Lawfully present immigrants are more likely than citizens to live in low-income families and often work in jobs and industries that do not offer health coverage; 25% of them have Medicaid or CHIP coverage. This is actually lower than the rate of U.S. citizens who use Medicaid or CHIP, due to eligibility restrictions for immigrants and other barriers, such as fear.

An analysis by the Kaiser Family Foundation finds that this rule "would likely lead to broad declines in participation in Medicaid and other programs among immigrant families, including their primarily U.S.-born children."[6] Indeed, the preamble to the proposed rule recognizes that the rule may lead to disenrollment or foregone enrollment in public benefit programs among foreign-born noncitizens as well as U.S. citizens who are members of mixed status households.[7]

Previous experience from welfare reform indicates that many eligible immigrants will not enroll out of fear that it would negatively affect their immigration status. After the 1996 welfare reform law was passed, U.S. citizen children of immigrants were still eligible for SNAP, but their participation declined by 37% in the year after welfare reform was implemented.[8] Kaiser's analysis shows that, if Medicaid/CHIP disenrollment rates range from 15% to 35%, an estimated 875,000 to 2 million citizen children with a noncitizen parent could drop Medicaid/CHIP coverage despite remaining legally eligible and needing the health care services.[9] The proposed rule does not include the use of CHIP as a negative factor, though the administration has specifically requested comment on whether or not to include it in the final rule. Any diminution of the CHIP program would wreak harm on millions of children. This would constitute nothing short of a serious public health catastrophe.

Decreased participation in Medicaid/CHIP would increase the uninsured rate among immigrant families, negatively affecting both their health and their financial stability. Reduced participation in nutrition programs like SNAP and loss of access to steady housing could compound these effects. Again, the preamble to the proposed rule recognizes these possibilities. It should also be noted that disenrollment in public benefit programs could lead to worse health outcomes, especially for pregnant or breastfeeding women, infants, or children; reduced prescription

[6] https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/
[7] https://www.dhs.gov/sites/default/files/publications/18_0921_USCIS_Proposed-Rule-Public-Charge.pdf
[8] https://jamanetwork.com/journals/jama/fullarticle/2705813
[9] https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/

adherence; increased emergency room use and emergent care due to delayed treatment; increased prevalence of diseases; increased rates of poverty and housing instability; and reduced productivity and educational attainment. The introduction to the rule also states that the rule may increase poverty of certain families and children, including U.S. citizen children.[10]

Implications for public health

The mass disenrollment of immigrants from Medicaid could have significant effects on the broader state of public health. As one example, as immigrants come to avoid needed care like immunizations, the chance of outbreaks of transmissible pathogens increases throughout the broader population. For another, many patients will undoubtedly end up seeking care in the emergency room rather than in doctor's offices, clinics or other more appropriate and less costly settings. This dynamic will have significant follow-on effects on immigrants and their health status, but will also have negative effects on emergency room crowding and hospital resources, with a corresponding negative impact on the ability of the broader population to access these critical services.

In an extreme case, undocumented patients with end-stage renal disease who receive emergency dialysis tend to have higher mortality rates than patients who receive regular dialysis. At the other extreme, patients are very unlikely to receive age-appropriate cancer screening and preventive health counseling during emergency department visits.[11] Delayed care, as nurses know all too well, means that patients are sicker and more expensive to treat when they do present in the ER. Indeed, in the current state of healthcare, patient acuities are high, as doctor visits and medicines are put off, according to the Commonwealth Fund. To add to this already problematic condition moves us in exactly the wrong direction. As nurses, we must sound an alarm over these prospective health outcomes.

This has also has effects the health system level. Emergency departments could become more strained with non-urgent patients. Safety-net health systems, like New York City's Health + Hospitals (NYC H+H), are likely to receive most of these uninsured patients. These systems are already taxed, and adding further uncompensated care could make it difficult for them to provide care for all of their patients.[12] This too adds to a public health crisis by putting a strain on public systems, indeed all safety net hospitals, already struggling to cope with uncompensated care demands.

As legal immigrants are intimidated and pushed off of Medicaid and CHIP by the new Public Charge rules, they would stay away from the health care programs they need. As immigrant patients drop their Medicaid and CHIP insurance coverage, they will present as uninsured or self-pay patients, and health care providers will be faced with reduced reimbursement and increased costs of providing unreimbursed care.

[10] https://www.dhs.gov/sites/default/files/publications/18_0921_USCIS_Proposed-Rule-Public-Charge.pdf
[11] https://jamanetwork.com/journals/jama/fullarticle/2705813
[12] https://jamanetwork.com/journals/jama/fullarticle/2705813

The health effects on immigrants and the correlated financial repercussions for health providers will be further exacerbated as immigrant families also forego SNAP vouchers and other support to provide basic security. The decline in nutrition will further exacerbate the negative health effects on immigrant communities and the financial effects on health providers.

Implications for clinicians and nursing practice

Clinicians also have to figure out how to provide sound health care counsel in this new environment.

Health care professionals know the importance of preventive care and advise their patients to get regular screenings, and to avoid emergency rooms unless there is an actual emergency. But they also know the importance of keeping families united. How should health care professionals like NYSNA nurses go about advising their patients? As Mitchell Katz, the head of New York City Health + Hospitals Corporation, asks: "How can physicians and other health care professionals help patients balance concerns about their health and their families? Can they even be advised about whether to remain enrolled in Medicaid without an immigration attorney in the room?"[13]

Effects on New York State

The implications of the proposed rule for New York State are particularly grim. An analysis by the Migration Policy Institute found that there are 1.03 million non-citizen New Yorkers living in families that receive Medicaid or CHIP. If application of the proposed rule follows the historical patterns that were apparent following "welfare reform" in the 1990s, then 20%-60% could disenroll - 200,000 – 600,000 New Yorkers could lose Medicaid or CHIP.[14] Kaiser also estimates that there are 392,000 citizen children in New York State who have non-citizen parents. If 15% to 35% of these children are disenrolled by their parents in an effort to protect their own immigration or resident status, as Kaiser estimates, this would mean that 59,000 to 137,000 citizen children in New York State would lose access to Medicaid or CHIP.[15]

The effects of such an outcome on these families and the broader community will be catastrophic.

Effects on New York State Hospitals and other Healthcare Providers

The shift of large numbers of currently insured NY residents, perhaps exceeding 1 million in total, to uninsured status would cause a cascading financial shock to NY state hospitals and other health care providers. Revenues will fall significantly, while the costs of uncompensated care would

[13] https://jamanetwork.com/journals/jama/fullarticle/2705813
[14] https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families
[15] https://www.kff.org/report-section/potential-effects-of-public-charge-changes-on-health-coverage-for-citizen-children-appendix/

skyrocket as these patients shift from primary and clinic care settings to local emergency rooms and inpatient facilities.

The New York City Health + Hospitals system, which is a large public hospital system that already suffers the strain of caring for a disproportionate number of uninsured and underinsured patients, would see it revenues drop drastically and its already large uncompensated care costs sky-rocket. The Health + Hospitals system estimates that the proposed rule would cause its net losses to increase by an additional $362 million in the first year alone if the proposed rule is adopted. About 40% of the Health + Hospitals patient population is foreign born, and the proposed rule would affect 350,000 of the more than 1 million distinct patients served by the system.[16]

Though the Health + Hospitals system would be the hardest hit by the proposed changes in the public charge rules, similar effects would be felt by all hospitals in the city of New York and other parts of the state.

Given the precarious financial state of many NY hospitals, the systemic effect of the proposed changes on the financial stability of the entire hospital and health care infrastructure could cause cascading hospital failures and closures. This will not only impact affected immigrant populations, it will also disrupt access to vital health services for all New York residents, citizen and non-citizen alike.

Conclusion

For more than a century, the federal government has understood the fundamental reality that connects healthcare and nutrition to a productive workforce and a vibrant society. The proposed rule will disrupt growth and stability in the broader economy, in the health care delivery system and in the families and lives of millions of New Yorkers.
As nurses, we cannot stand by and see this draconian, cruel and disruptive policy implemented. We strongly oppose the proposed rule and urge its rejection.

Submitted on December 7, 2018

[16] Crain's Health Pulse, December 6, 2018, at https://www.crainsnewyork.com/health-care/hh-projects-362m-loss-trump-proposed-changes-public-charge-rule