**PROTECTING IMMIGRANT FAMILIES-ILLINOIS (PIF-IL):**
**Template Comment for Healthcare and Public Health**

# INSTRUCTIONS FOR USING THIS TEMPLATE

The material that follows is a template comment that includes general language for a wide range of arguments--with a particular health lens focus--opposing the public charge rule. This template is designed to make it easy for healthcare providers/organizations to generate their own shorter template comments for submission in the Federal Register by December 10, focusing on the issues or populations that are greatest concern to them.

Sections in **GREEN** can be copy/pasted into your comment and then modified. Select arguments that are most critical to your organization and/ or audience. You are encouraged to add new arguments, modify existing arguments to align with your priorities, and include additional data and references. In the same vein, directions in **YELLOW** are intended for organizations to customize to create a unique comment.

Federal Agencies now use software to compare the comments they receive, and identical comments will have less impact than unique ones. **You may receive several template comments from different organizations, and we encourage you to use the template or template sections of your choice and to mix and match**. If you have questions about this template, please contact us at **pifillinois@povertylaw.org**. Answers to FAQs on the commenting process are available in this companion document.

- **Comments should be submitted online by December 10, 2018** at https://www.regulations.gov/document?D=USCIS-2010-0012-0001. Click on "comment now" and either enter your comment in the text box (must be fewer than 5000 characters) or upload your comments as a PDF.
- **Please don't suggest corrective language.** Our ultimate goal is to stop this rule from moving forward. Therefore, while it is important to raise concerns, we do not recommend suggesting ways that the agency can "fix" the proposed language.
- **Please don't discuss programs that aren't specifically mentioned in the Proposed Rule.** Highlighting programs that are not specifically mentioned could give the agency cover to include those programs in the final rule, even though they aren't in the Proposed Rule.
- **Attach research and supporting documents.** If you cite to research and supporting documents in your comments, we also recommend including them as an attachment so that they are clearly part of the administrative record. Another option is to include a live link to cited sources. If you include links, specifically request that the agency read the material at these links.
- **If you have credibility in an issue area, say so.** If you are a subject matter expert and want to offer comments on your area of expertise, explain why you are uniquely qualified to offer this perspective. Feel free to explain your educational and professional background, or attach a copy of your CV to your comments.
- **After you submit your comments, please also share them with the Protecting Immigrant Families-Illinois Coalition.** After you hit send on your comments, please take a minute to share them with the PIF campaign by emailing them to **pifillinois@povertylaw.org**. PIF-IL will keep a copy and also submit a copy to national PIF Campaign, which is developing a plan to review comments submitted by allies and extract the most helpful data, stories, arguments, and other messages that will help with our advocacy work and possibly litigation.

**PROTECTING IMMIGRANT FAMILIES-ILLINOIS (PIF-IL):**
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# TEMPLATE COMMENT LANGUAGE

[DATE]

*Submitted via www.regulations.gov*

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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: DHS Docket No. USCIS-2010-0012, RIN 1615-AA22, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds

Dear Sir/Madam:

I am writing on behalf of [organization name] in response to the Department of Homeland Security's (DHS, or the Department) Notice of Proposed Rulemaking (NPRM or proposed rule) to express our strong opposition to the changes regarding "public charge," published in the Federal Register on October 10, 2018. The proposed rule would significant and pointless harm to immigrants and their families, localities, states, and health care providers and facilities, and DHS provides no justification for why changes are needed. [EDIT this sentence as seems appropriate to you.] We urge that the rule be withdrawn in its entirety, and that long standing principles clarified in the 1999 field guidance remain in effect.

[INSERT paragraph describing your organization, if applicable, and why this is particularly urgent to you, plus the expertise that you have on issues raised. If you are a service provider, consider including specific data on the populations you serve. If you are a state/local organization, consider including demographic information.]

## Overview of the Proposed Rule's Massive Changes to the Long-Standing Public Charge Assessment

The proposed rule would enact a massive change to current policy –altering the public charge test dramatically, abandoning the enduring and long accepted meaning of a public charge as a person who depends on the government for subsistence for a broad and punitive test that threatens the health and safety of our community. The proposed rule's radical expansion of the definition to include any immigrant who simply "receives one or more public benefits" is unconscionable. The rule's unprecedented income test and weighing negatively many factors that have never been relevant. For example, the proposed rule details how being a child or a senior, having a large family, or having a treatable medical condition could be held against immigrants seeking a permanent legal status. Because this rule targets family-based immigration as well as low and moderate wage workers, it will also have a disproportionate impact on people of color. All of these changes amount to a sea change in American

policy towards immigration, counting wealth and income as the primary indicators of a person's future contribution.

This drastic increase in the scope of who can be considered a public charge to include not just people who receive benefits as the main source of support, but also people who use basic needs programs to supplement their earnings from low-wage work, is bad policy for Illinois and for our country.

## Overview of the Proposed Rule's Major Harms, Including the Chilling Effect on Essential Benefit Programs

The Proposed Rule itself acknowledges that it would cause great harm to individuals, families, and communities, but then largely ignores its own conclusion. But in Illinois, we know that the proposed rule would make—and has already made—immigrant families afraid to seek programs that support their basic needs. The fear extends far beyond any individual who may be subject to the "public charge" test, and the impact is harming entire communities and our shared infrastructure of schools, hospitals and clinics, food pantries, public health efforts, and homeless shelters, among many others.

By this chilling effect, the proposed rules would prevent immigrants from using the programs that draw Illinois tax dollars (including those paid by immigrants) back to Illinois. It would increase our poverty levels, hunger, ill-health and unstable housing by discouraging enrollment in programs that improve health, food security, nutrition, and economic security, with profound consequences for families' well-being and the long-term success of our state. All of these consequences are identified in the proposed rule itself, under costs and supported by a substantial body of evidence demonstrating that the proposed rule's impact would be significant and damaging.

History reveals what happens when federal policy causes confusion and fear in the immigrant community regarding eligibility for benefits. While ideologues may consider the historic disenrollment a victory, what it means for Illinois residents, Illinois institutions, Illinois public health, and the Illinois budget is just the opposite. The 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) limited immigrant eligibility for federal means-tested public benefits, but Congress did not amend the public charge law to change what types of programs should be considered. That same year, in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Congress codified the case law interpretation of public charge. After 1996, there was a lot of confusion about how the public charge test might be used against immigrants who were eligible for, and receiving certain non-cash benefits and legal immigrants' use of public assistance programs declined significantly.[1] Even among groups of immigrants who were explicitly excluded from the 1996 eligibility changes, and U.S citizen children in mixed status families, participation dropped dramatically.[2] In fact, researchers found that there were 25% disenrollment among children of foreign-born parents from Medicaid even though the majority of these children were not affected by the eligibility changes and remained eligible.[3]

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[1] Fix, Michael and Jeffrey Passel, "Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994-97," (Washington, D.C.: The Urban Institute, 1999).

[2] Neeraj Kaushal and Robert Kaestner, "Welfare Reform and health insurance of Immigrants," Health Services Research, 40(3), (June 2005), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/pdf/hesr_00381.pdf.

[3] Neeraj Kaushal and Robert Kaestner, "Welfare Reform and health insurance of Immigrants," Health Services Research, 40(3), (June 2005), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/pdf/hesr_00381.pdf.

History and recent research underscore that the chilling effect due to the Proposed Rule will be therefore be massive: The rule would potentially deter as many approximately 26 million people in the United States from receiving critical supports.[4] The structure of the rule gives DHS substantial discretion to assess whether someone is likely to become a public charge; that discretion, coupled with the complexity of the rule, is likely to generate confusion about who is impacted and what benefits are included, deterring immigrants from using needed benefits—including benefits that are not implicated by the rule. Family members of immigrants who are citizens may also be deterred from seeking or maintaining benefits. The proposed rule would create a chilling effect -- making individuals afraid to access programs and undermining access to critical health, food, and other supports for eligible immigrants and their families. Among the most harmed by the proposed rule are children, including U.S. citizen children, who would likely decrease participation in support programs, despite remaining eligible.

Based on benefit enrollment patterns observed in the wake of welfare reform during the 1990s, social scientists report that immigrants' use of health, nutrition, and social services could decline significantly if the proposed public charge rule were finalized.[5] Approximately 25.9 million people would be potentially chilled by the proposed public charge rule, accounting for an estimated 8% of the U.S. population.[6] This number represents individuals and family members with at least one non-citizen in the household and who live in households with earned incomes under 250% of the federal poverty level. Of these 25.9 million people, approximately 9.2 million are children under 18 years of age who are family members of at least one noncitizen or are noncitizen themselves, representing approximately 13% of our nation's child population.[7] According to the Kaiser Family Foundation, an estimated 2.1 million to 4.9 million Medicaid/CHIP enrollees could disenroll, if the proposed rule leads to disenrollment rates between 15 percent and 35 percent.[8] Since welfare reform in the 1990s did not affect immigration status directly, unlike the proposed public charge rule, these estimates may actually underestimate the impact of the rule on benefit usage.[9] Further, the current political climate, with efforts to reduce legal immigration for the first time in decades and increased arrests and deportations, fear of immigration consequences of

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[4] 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 2012-2016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder. Custom Tabulations by Manatt Health, 5/16/2018. Calculation of Potentially Chilled Population, based on families with at least one non-citizen and earned income under 250% of the federal poverty line.

[5] Jeanne Batalova, Michael Fix, and Mark Greenberg "Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use" (Washington, DC: Migration Policy Institute, 2018) https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families.

[6] 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 2012-2016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder. Custom Tabulations by Manatt Health, 5/16/2018. Calculation of Potentially Chilled Population, based on families with at least one non-citizen and earned income under 250% of the federal poverty line.

[7] 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 20122016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt health, 9/30/2018. Found online at https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population.

[8] Samantha Artiga, Raphael Garfield, and Anthony Damico "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid" (Washington, DC: Kaiser Family Foundation, 2018). https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaid/.

[9] Samantha Artiga, Raphael Garfield, and Anthony Damico "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid" (Washington, DC: Kaiser Family Foundation, 2018) https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaid/.

using public benefits could be even greater.[10] Research conducted in 2017 and 2018 confirms anti-immigrant federal policy and rhetoric continues to create barriers in access to health and nutrition programs for people in immigrant families. Health and nutrition service providers have noticed an increase in canceled appointments and requests to disenroll from means-tested programs in 2017.[11]

A large share of the people potentially chilled by the proposed public charge rule reside in five states – California, Florida, Illinois, New York, and Texas – that account for approximately 61% of the total impacted population (15.9 million).[12] In Illinois, there are 1.76 million total immigrant residents (noncitizens and naturalized citizens).[13] If the proposed rule were finalized, it could deter as many as 1.04 million immigrants and their family members (including U.S. citizen children) living in Illinois from accessing health care, nutrition or housing assistance.[14] [**Please use the Manatt Health data dashboard to customize for your particular geography within Illinois, population focus, etc: https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard ]** There are also an estimated 388,000 non-citizens enrolled in the Illinois Medicaid Program.[15] As stated above, according to the Kaiser Family Foundation, the proposed rule could lead to disenrollment rates between 15 percent and 35 percent.[16] Therefore, statewide in Illinois between 58,200 (15% of 388,000) and 135,800 (35% of 388,000) non-citizens could disenroll from Medicaid due to the proposed rule. This is likely an underestimate because it does not take into account the broad chilling effect on all immigration statuses, including U.S. citizen children who are dependents of non citizens, and including naturalized citizens. In Illinois, 442,000 U.S. citizen children have a non-

[10] Jeanne Batalova, Michael Fix, and Mark Greenberg "Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use" (Washington, DC: Migration Policy Institute, 2018) https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families.

[11] Jennifer Laird et al, Foregoing Food Assistance Out of Far Changes to "Public Charge" Rule May Put 500,000 More U.S. Citizen Children at Risk of Moving into Poverty," Columbia Population Research Center (April 5, 2018) https://static1.squarespace.com/static/5743308460b5e922a25a6dc7/t/5af1a2b28a922db742154bbe/1525785266892/Poverty+and+Social+Policy+Brief_2_2.pdf

[12] 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 20122016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt health, 9/30/2018. Found online at https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population.

[13] Jeanne Batalova, Michael Fix, and Mark Greenberg "Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use" (Washington, DC: Migration Policy Institute, 2018) https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families.

[14] 2012-2016 5-Year American Community Survey Public Use Microdata Sample (ACS/PUMS); 20122016 5-Year American Community Survey (ACS) estimates accessed via American FactFinder; Missouri Census Data Center (MCDC) MABLE PUMA-County Crosswalk. Custom Tabulation by Manatt health, 9/30/2018. Found online at https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population.

[15] Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use, Jeanne Batalova, Michael Fix, Mark Greenberg, (June 2018), 2014-2016 data, available at: https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families

[16] Samantha Artiga, Raphael Garfield, and Anthony Damico "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid" (Washington, DC: Kaiser Family Foundation, 2018). https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaid/.

citizen parent.[17] An estimated 224,000 of these children are enrolled in the Medicaid program. Using the Kaiser projected disenrollment percentages, an additional 33,600 (15% of 224,000) to 78,400 (35% of 224,000) children could disenroll in Medicaid in Illinois due to the proposed rule. Again, this is likely an underestimate of children and others who would likely disenroll in Medicaid due to the fear and confusion that this proposed rule will create in Illinois and nationally.

## The Final Rule Should Not Include Use of Medicaid (Nor SNAP, Housing Assistance, or Medicare Part D) as Part of the Public Charge Assessment

The Final Rule should not include Medicaid, Housing Assistance, Medicare Part D, nor SNAP (food stamps) in the public charge assessment. Federal Agencies in the past have researched and rejected notion of including these and many other non-cash benefits. [**As professionals working in the health care sector, we are adamant that Medicaid should not be including in the public charge assessment. (modify to include your role/ and or health lens]** The 1999 policy on public charge properly calibrated which benefits should be included in the public charge test and Medicaid should not be included in the Final Rule's determination of public charge. Under previous policy clarified in 1999, the federal government specified that it would not consider use of Medicaid in public charge determinations. Specifically, in 1999, the Immigration and Naturalization Service (now part of the Department of Homeland Security (DHS)) issued guidance that defined a public charge as someone who has become or who is likely to become ''primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense."[18] The guidance specified that the federal government would not consider use of Medicaid, CHIP, or other supportive programs in public charge determinations, with the exception of use of Medicaid for long-term institutional care. The guidance noted that this clarification was necessary because ongoing confusion about public charge policies:

> [D]eterred eligible aliens and their families, including U.S. citizen children, from seeking important health and nutrition benefits that they are legally entitled to receive. This reluctance to access benefits has an adverse impact not just on the potential recipients, but on public health and the general welfare.[19]

The Final Rule should not include Medicaid (or any of the newly proposed public benefits) in the public charge assessment. If Medicaid is included in the public charge test, millions of immigrants will disenroll from Medicaid or forgo the Medicaid benefits that they are entitled to due to fear, confusion, worry

[17] Samantha Artiga, Anthony Damico, and Raphael Garfield, "Potential effects of Public Charge Changes on Health Coverage for Citizen Children," (Washington, DC: Kaiser Family Foundation, May 2018), available at: https://www.kff.org/disparities-policy/issue-brief/potential-effects-of-public-charge-changes-on-health-coverage-for-citizen-children/.

[18] "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds," Immigration and Naturalization Service, Justice, 64 Fed. Reg. 28689-28693 (March 26, 1999), https://www.gpo.gov/fdsys/pkg/FR-1999-05-26/pdf/99-13202.pdf.

[19] "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds," Immigration and Naturalization Service, Justice, 64 Fed. Reg. 28689-28693 (March 26, 1999), https://www.gpo.gov/fdsys/pkg/FR-1999-05-26/pdf/99-13202.pdf.

over any impact Medicaid enrollment would have on their immigration status. This will essentially cut off the lifeline that so many immigrants rely on to be able to stay healthy and self-sufficient. Medicaid provides families access to preventive and primary care, including prenatal care, as well as care for chronic conditions.[20] In addition, the coverage provides families financial protection from high medical costs. By enabling families to meet their health care needs, Medicaid supports families' ability to work and care for their children. The majority of lawfully present immigrants live in a family with at least one full-time worker (83%), a rate equal to that of citizens.[21] However, 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.[22]

The inclusion of Medicaid in the proposed rule will result in decreased participation in Medicaid, which in turn, would increase the uninsured rate among immigrant families, negatively affecting their health and financial stability. Coverage losses would reduce access to care for families, contributing to worse health outcomes; reduced participation in nutrition and other programs would likely compound these effects.[23] Overall, reduced participation in Medicaid and other programs would negatively affect their health and financial stability and the growth and healthy development of their children, who are predominantly U.S.-born.[24]

## The Final Rule Should Not Include the Children's Health Insurance Program (CHIP) as Part of the Public Charge Assessment

In the proposed rule, at FR 51174, DHS specifically requests comment on whether the Children's Health Insurance Program (CHIP) should be included in a public charge determination. For many of the same reasons that we oppose the inclusion of Medicaid, we adamantly oppose the inclusion of CHIP. CHIP is a program for working families to access health insurance. Making the receipt of CHIP a negative factor in the public charge assessment, or including it in the "public charge" definition, would exacerbate the problems with this rule by extending its reach further to exclude moderate income working families – and applicants likely to earn a moderate income at some point in the future.

Including CHIP in a public charge determination would likely lead to many eligible children foregoing health care benefits, both because of the direct inclusion in the public charge determination as well as the chilling effect detailed elsewhere in these comments. Nearly 9 million children across the U.S.—

[20] Proposed Changes to "Public Charge" Policies for Immigrants: Implications for Health Coverage, Kaiser Family Foundation, Sept. 24, 2018, available at: https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/

[21] Kaiser Family Foundation analysis of the March 2017 Current Population Survey, Annual Social and Economic Supplement.

[22] Kaiser Family Foundation analysis of the March 2017 Current Population Survey, Annual Social and Economic Supplement.

[23] Proposed Changes to "Public Charge" Policies for Immigrants: Implications for Health Coverage, Kaiser Family Foundation, Sept. 24, 2018, available at: https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/

[24] Proposed Changes to "Public Charge" Policies for Immigrants: Implications for Health Coverage, Kaiser Family Foundation, Sept. 24, 2018, available at: https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/

including several hundred thousand in Illinois alone--depend on CHIP for their health care. Due to the chilling effect of the rule, eligible citizen children likely would forego CHIP—and health care services altogether in the percentages discussed above—if their parents think they will be subject to a public charge determination.

In addition to the great harm that would be caused by the inclusion of CHIP, this would be counter to Congress' explicit intent in expanding coverage to lawfully present children and pregnant women. Section 214 of the 2009 Children's Health Insurance Program Reauthorization Act (CHIPRA) gave states a new option to cover, with regular federal matching dollars, lawfully residing children and pregnant women under Medicaid and CHIP during their first five years in the U.S. This was enacted because Congress recognized the public health, economic, and social benefits of ensuring that these populations have access to care. Illinois took up this CHIPRA option.

Since its inception in 1997, CHIP has enjoyed broad, bipartisan support based on the recognition that children need access to health care services to ensure their healthy development. Senator Orrin Hatch (R-UT), one of the original co-sponsors of CHIP, said that "Children are being terribly hurt and perhaps scarred for the rest of their lives" and that "as a nation, as a society, we have a moral responsibility" to provide coverage. CHIP has been a significant factor in dramatically reducing the rate of uninsured children across the U.S. According to the Kaiser Family Foundation, between 1997 when CHIP was enacted through 2012, the uninsured rate for children fell by half, from 14 percent to seven percent.

In Illinois, our uninsurance rate for children—just 2.4%-- is one of the lowest in the country due to CHIP[25] Medicaid and CHIP together have helped to reduce disparities in coverage that affect children, particularly children of color. A 2018 survey of the existing research noted that the availability of "CHIP coverage for children has led to improvements in access to health care and to improvements in health over both the short-run and the long-run."[26] As noted by the Kaiser Family Foundation, CHIP:

- Can have a positive impact on health outcomes, including reductions in avoidable hospitalizations and child mortality.
- Improves health which translates into educational gains, with potentially positive implications for both individual economic well-being and overall economic productivity.[27]

Continuous, consistent coverage without disruptions is especially critical for young children, as experts recommend 16 well-child visits before age six, more heavily concentrated in the first two years, to monitor their development and address any concerns or delays as early as possible.[28] As noted by the Center for Children and Families: A child's experiences and environments early in life have a lasting

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[25] State Health Coverage Facts for Illinois for as of January 1, 2017, Georgetown CCF website, available at: https://ccf.georgetown.edu/state-childrens-health-facts/

[26] "CHIP and Medicaid: Filling in the Gap in Children's Health Insurance Coverage. | Econofact". *Econofact*. 2018-01-22. Retrieved 2018-01-23.

[27] Kaiser Family Foundation, *The Impact of the Children's Health Insurance Program (CHIP): What Does the Research Tell Us?,* Jul. 2014 https://www.kff.org/medicaid/issue-brief/the-impact-of-the-childrens-health-insurance-program-chip-what-does-the-research-tell-us/.

[28] Elisabeth Wright Burak, Georgetown Center for Children and Families, *Promoting Young Children's Healthy Development in Medicaid and the Children's Health Insurance Program (CHIP),* Oct. 2018, https://ccf.georgetown.edu/wp-content/uploads/2018/10/Promoting-Healthy-Development-v5-1.pdf.

impact on his or her development and life trajectory. The first months and years of a child's life are marked by rapid growth and brain development.[29]

We are also concerned that DHS notes that the reason it does not include CHIP in the proposed rule is that CHIP does not involve the same level of expenditures as other programs that it proposes to consider in a public charge determination and that noncitizen participation is relatively low.[30] The question of which programs to include should not at all consider government expenditures. Whether there is a large government expenditure on a particular program is irrelevant to the assessment of whether a particular individual may become a public charge. A public charge determination must be an individualized assessment, as required by the Immigration and Nationality Act, and not a backdoor way to try to reduce government expenditures on programs duly enacted by Congress.

Overall, we believe the benefits of excluding CHIP and Medicaid certainly outweigh their inclusion in a public charge determination. We recommend that DHS continue to exclude CHIP from consideration in a public charge determination in the final rule but also exclude receipt of Medicaid for the same reasons.

## The Proposed Rule Would Have Devastating Effects on Pregnant Women, Children Generally and Children with Special Health Care Needs in Particular

The proposed rule would cause harm to the children of immigrant parents, whether they are immigrants or citizens themselves, as the cost-benefit analysis in the proposed rule acknowledges. Children's well-being is inseparable from their parents' and families' well-being in the short- and long-term. Children thrive when their parents can access needed health or mental health care, when their families have enough to eat, and a roof over their heads. Conversely, parents' stress and health challenges impede effective caregiving and can undermine children's development. In states—like Illinois--that have chosen to provide Medicaid coverage to all lawfully present pregnant women, the link between parent and child well-being is even more direct and the risk under the proposed rule even more acute: a mother's use of health care during her pregnancy could prevent her from later extending or improving her immigration status.

Investing in nutrition, health care, and other essential needs keeps children learning, parents working, families strong, and allows all of us to contribute fully to our communities. The policies articulated in the proposed rule would terrify immigrant families, discourage or prevent hard-working people from immigrating, and deter immigrant families from seeking the help they need to lead a healthy and productive life. All of these impact the health and well-being of every Illinoisan. By the Department's own admission, the rule "*has the potential to erode family stability and decrease disposable income of families and children because the action provides a strong disincentive for the receipt or use of public benefits by aliens, as well as their household members, including U.S. children*."[31] Targeting low-income families will only exacerbate hunger and food insecurity, unmet health care needs, poverty, homelessness, and other serious problems which states, not the federal government, will have to

[29] Elisabeth Wright Burak, Georgetown Center for Children and Families, *Promoting Young Children's Healthy Development in Medicaid and the Children's Health Insurance Program (CHIP),* Oct. 2018, https://ccf.georgetown.edu/wp-content/uploads/2018/10/Promoting-Healthy-Development-v5-1.pdf.

[30] 83 Fed. Reg. at 51174.

[31] *Inadmissibility on Public Charge Grounds*, Federal Register, Vol. 83, No. 196, filed October 10, 2018, Proposed Rule at 51277, available at: https://www.regulations.gov/document?D=USCIS-2010-0012-0001.

address. If it moves forward, the rule will have ripple-effects on the health, development, and economic outcomes of generations to come.

One in four children in the U.S. -- nearly 18 million children -- has at least one immigrant parent;[32] this mirrors Illinois where one out of every four children has an immigrant parent.[33] In Illinois, there are 3,048,000 children; of these, 791,000 citizen children have an immigrant (non-citizen or Naturalized U.S. citizen) parent.[34] Children born in the United States to immigrant parents are U.S. citizens and therefore eligible for public benefits under the same eligibility standards as all other U.S. citizens.[35] Currently nationally more than eight million citizen children with an immigrant parent have Medicaid/CHIP coverage; in Illinois that number is 341,000.[36] However, nationally seven percent of citizen children with an immigrant parent still lack any health insurance coverage.[37] The notion that we can harm this many of our community members and protect the rest of our community from harm is preposterous.

Children in immigrant families are more likely to face certain hardships and are already less likely to secure help due in part to complex eligibility rules that create barriers for immigrant families.[38] However, like all children, children in immigrant families benefit when they have access to programs and services that promote their development. Parents' and children's health are inextricably linked and children do better when their parents are mentally and physically healthy. Children whose parents are insured are more likely to have insurance themselves.[39] Research demonstrates that safety net

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[32] Migration Policy Institute, Children in U.S. Immigrant Families 2016, https://www.migrationpolicy.org/programs/data-hub/charts/children-immigrant-families

[33] An immigrant parent is a foreign-born parent, including naturalized citizens, lawfully present immigrants, and undocumented immigrants. Nearly 20 Million Children Live in Immigrant Families that Could Be Affected by Evolving Immigration Policies, Kaiser Family Foundation, Samantha Artiga and Anthony Damico, (Apr 18, 2018), available at: https://www.kff.org/disparities-policy/issue-brief/nearly-20-million-children-live-in-immigrant-families-that-could-be-affected-by-evolving-immigration-policies/

[34] An immigrant parent is a foreign-born parent, including naturalized citizens, lawfully present immigrants, and undocumented immigrants. Nearly 20 Million Children Live in Immigrant Families that Could Be Affected by Evolving Immigration Policies, Kaiser Family Foundation, Samantha Artiga and Anthony Damico, (Apr 18, 2018), available at: https://www.kff.org/disparities-policy/issue-brief/nearly-20-million-children-live-in-immigrant-families-that-could-be-affected-by-evolving-immigration-policies/

[35] Michael Fix & Ron Haskins, Welfare Benefits for Non-citizens, Brookings Institute, (Feb. 2, 2002), https://www.brookings.edu/research/welfare-benefits-for-non-citizens/.

[36] Samantha Artiga & Anthony Damico, Nearly 20 Million Children Live in Immigrant Families that Could Be Affected by Evolving Immigration Policies, Kaiser Family Foundation, (Apr. 18, 2018), https://www.kff.org/disparities-policy/issue-brief/nearly-20-million-children-live-in-immigrant-families-that-could-be-affected-by-evolving-immigration-policies/ .

[37] Samantha Artiga & Anthony Damico, Nearly 20 Million Children Live in Immigrant Families that Could Be Affected by Evolving Immigration Policies, Kaiser Family Foundation, (Apr. 18, 2018), https://www.kff.org/disparities-policy/issue-brief/nearly-20-million-children-live-in-immigrant-families-that-could-be-affected-by-evolving-immigration-policies/.

[38] Tanya Broder, Avideh Moussavian, and Jonathan Blazer, *Overview of Immigrant Eligibility for Federal Programs,* National Immigration Law Center, 2015, https://www.nilc.org/issues/economic-support/overview-immeligfedprograms/; Kinsey Alden Dinan, *Federal Policies Restrict Immigrant Children's Access to Key Public Benefits,* National Center for Children in Poverty, 2005, http://www.nccp.org/publications/pdf/text_638.pdf.

[39] Julie L. Hudon and Asako S. Moriya, "Medicaid Expansion for Adults Had Measurable 'Welcome Mat' Effects on Their Children," *Health Affairs* 36 (2017), https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0347; Joan Alker and Alisa Chester, *Children's Health Insurance Rates in 2014: ACA Results in Significant Improvements,* Georgetown

programs such as Medicaid have short and long-term health benefits and are crucial levers to reducing the intergenerational transmission of poverty.[40]

The value of access to public benefits has been documented repeatedly. Multiple studies confirm that early childhood or prenatal access to Medicaid improves health and reduces reliance on cash assistance.[41,42] Children in immigrant families with health insurance coverage are more likely to have a usual source of care and receive regular health care visits, and are less likely to have unmet care needs.[43] Children with access to Medicaid have fewer absences from school, are more likely to graduate from high school and college, and are more likely to have higher paying jobs as adults.[44] Essential health, nutrition and housing assistance prepares children to be productive, working adults.[45] Counting it as a negative factor in the public charge assessment is contrary to the purpose of the public charge ground of inadmissibility.

According to estimates from the National Survey of Children's Health, roughly 2.6 million children in immigrant families have a disability or special health care need.[46] Children with special health and developmental needs tend to require medical, behavioral, and/or educational services above and beyond what typical children need to keep them healthy and promote positive development. These special needs make children with disabilities in immigrant families vulnerable to hardship due to the economic burdens associated with requiring specialized care. Parents of children with disabilities typically work fewer hours and ultimately earn less income due to their children's caregiving needs.[47] As a group, children with disabilities are more likely to live in low-income households and to experience food insecurity and housing instability, making programs like SNAP and housing assistance vital to their wellbeing.[48] Ensuring that kids with special health care needs have access to services helps their parents

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University Health Policy Institute, Center for Children and Families, 2015, http://ccf.georgetown.edu/wp-content/uploads/2015/10/ACS-report-2015.pdf.

[40] Page, Marianne, "Safety Net Programs Have Long-Term Benefits for Children in Poor Households", Policy Brief, University of California, Davis, 2017 https://poverty.ucdavis.edu/sites/main/files/file-attachments/cpr-health_and_nutrition_program_brief-page_0.pdf

[41] Children's Health Watch, *Report Card on Food Security and Immigration: Helping Our Youngest First-Generation Americans To Thrive,* 2018, http://childrenshealthwatch.org/wp-content/uploads/Report-Card-on-Food-Insecurity-and-Immigration-Helping-Our-Youngest-First-Generation-Americans-to-Thrive.pdf

[42] Chloe N. East, "The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility," Working Paper, 2017, http://www.chloeneast.com/uploads/8/9/9/7/8997263/east_fskids_r_r.pdf.

[43] Christine Percheski and Sharon Bzostek, "Public Health Insurance and Health Care Utilization for Children in Immigrant Families," *Maternal and Child Health Journal* 21 (2017).

[44] Karina Wagnerman, Alisa Chester, and Joan Alker, *Medicaid is a Smart Investment in Children*, Georgetown University Center for Children and Families, March 2017, https://ccf.georgetown.edu/2017/03/13/medicaid-is-a-smart-investment-in-children/.

[45] Kathryn Bailey, Elizabeth March, Stephanie Ettinger de Cuba, et al., *Overcrowding and Frequent Moves Undermine Children's Health*, Children's HealthWatch, 2011, www.issuelab.org/resources/13900/13900.pdf.

[46] Data query, National Survey of Children's Health (2016)

[47] Sloan Work and Family Research Network, Questions and Answers about Employed Parents Caring for Children with Disabilities, https://workfamily.sas.upenn.edu/sites/workfamily.sas.upenn.edu/files/imported/pdfs/Child_Disability.pdf.

[48] Rebecca Ullrich, *Cuts to Medicaid Would Harm Young Children with Disabilities*, Center for American Progress, 2017, https://www.americanprogress.org/issues/early-childhood/reports/2017/05/03/431766/cuts-medicaid-harm-young-children-disabilities; Susan L. Parish, Roderick A. Rose, Megan Andrews, et al., *Material Hardship in US Families Raising Children with Disabilities: Research Summary and Policy Implications,* UNC School of Social Work,

maintain work and improve earnings, helping both the Illinois economy and our state budget. The proposed rule would restrict immigrant families' access to public anti-poverty programs and further exacerbate the economic hardships that children with disabilities and other special needs and, as a result, Illinoisans overall already experience.

While many children in the U.S.—both in immigrant and native-born families—depend on public health insurance programs, Medicaid is uniquely critical for children with disabilities. Roughly half of all children with a disability or other special health care rely on public insurance for a variety of services and supports, including respite care; occupational, physical, or speech therapies; and prescription drugs.[49] These services are critical to keep children healthy and thriving, but they are typically costly—even with insurance—and are out of reach for families who lack coverage. The proposed rule would undermine immigrant families' access to Medicaid and other forms of public insurance and force families to pick and choose which services they can pay for on their own while still putting a roof over their heads and food on their tables. At minimum, forgoing critical services could hamper children's developmental progress. For some families, the stakes are even higher: comprehensive coverage through these programs is necessary to keep their children alive.

While the proposed rule includes exceptions for services funded by Medicaid but provided through the Individuals with Disabilities Education Act (IDEA), it is unclear how this carve-out would work in practice. Children with special needs cannot and do not receive Medicaid for educational services alone. The exclusion of Medicaid-funded IDEA services will likely do little to encourage families who are fearful of participating in Medicaid to maintain their enrollment.

Positive early experiences are essential for later success in school, the workplace, and the community. Research has shown that services to young children who have or are at risk for developmental delays are positively associated with overall health,[50] language and communication,[51] cognitive development, and social/emotional development.[52] Families benefit from early intervention by being able to better meet their children's needs from an early age and throughout their lives. Early Intervention is also cost effective; many children receiving EI services are diverted from later costly special education.

As of 2016 in Illinois, Early Intervention (EI) serves approximately 21,000 infants and toddlers and their families monthly—about 4% of all birth to three year olds (compared to the national rate of

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2009, https://www.realeconomicimpact.org/data/files/reports/outside%20reports/material%20hardship%20children%20with%20disabs.pdf.

[49] MaryBeth Musumeci and Julia Foutz, Medicaid's Role for Children with Special Health Care Needs: A Look at Eligibility, Services, and Spending, Kaiser Family Foundation, 2018, https://www.kff.org/medicaid/issue-brief/medicaids-role-for-children-with-special-health-care-needs-a-look-at-eligibility-services-and-spending/.

[50] Williams, D. R., Costa, M. V., Odunlami, A. O., & Mohammed, S. A. (2008). Moving Upstream. Journal of Public Health Management and Practice, 14(Supplement). doi:10.1097/01.phh.0000338382.36695.42

[51] Feinberg, E., Silverstein, M., Donahue, S. & Bliss, R. (2011). The impact of race on participation in Part C Early intervention services. Journal of Developmental and Behavioral Pediatrics, 32(4), 1-8.

[52] Guralnick, M. J. (2011). Why Early Intervention Works. Infants & Young Children, 24(1), 6-28. doi:10.1097/iyc.0b013e3182002cfe. Rosenberg, S. A., Robinson, C. C., Shaw, E. F., & Ellison, M. C. (2012). Part C Early Intervention for Infants and Toddlers: Percentage Eligible Versus Served. Pediatrics, 131(1), 38-46. doi:10.1542/peds.2012-1662.

participation of 3%).[53] However, research indicates that as many as 13% of birth to three year olds have delays or disabilities that make them eligible for EI. Two-thirds of children receiving services are male.[54] Over half of children in EI receive Medicaid.[55] The proposed rule would negatively impact countless families with a child with special health care needs and it is ridiculous to think that non-immigrants would somehow be insulated from this the effects of this harm. The proposed rule would be an unconscionable burden on immigrant children and the children of immigrants, but it would also a be pointless burden on all Illinoisans who will have to live in less prosperous, less healthy, and less stable communities.

## The Proposed Rule Would Create Barriers to Accessing Care for Pregnant Women

The proposed rule would create barriers to accessing care for pregnant women that could hasten the rise in maternal mortality and have serious health implications for the next generation. One of the demographics hit by the proposed rule hardest will be pregnant women. There exists an enormous peer-reviewed literature on the importance and benefit of ensuring that pregnant women receive adequate health care and nutritional food; a reduction in access to either will without question trigger short and long-term negative effects that can undermine outcomes in health, education, and employment for years to come.

Medicaid plays a particularly important role for pregnant women in Illinois since the births of over 80,000 babies are covered by the Illinois Department of Healthcare and Family Services' Medicaid program every year.[56] HFS covers over 50% of all Illinois births and over 90% of Illinois teen births.[57] And it is particularly important both to the health of the mother and to the baby, as well as to the fiscal outlook of the Illinois Medicaid program that every effort is made to ensure that mother and baby have a safe and healthy birth. The majority of HFS birth costs are for births with poor outcomes; costs for Medicaid covered births are increasing annually while the number of covered births is decreasing for the same period.[58] The lowest average cost is for a normal birth at approximately $12,000 per birth (prenatal care, delivery, postpartum, and infant's first year of life) in CY2015 while the Very Low Birth Weight (VLBW) average cost is the highest at over $328,000.[59] Low Birth Weight (LBW), other non-normal DRG and VLBW births account for a lower percentage of total births, but a higher percentage of

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[53] Illinois Bureau of Early Intervention. (2016). Early Intervention Statistical Report retrieved from https://illinois.edu/blog/files/6480/324759/91124.pdf. See also: "Illinois Early Intervention," Fact Sheet, The Sargent Shriver National Center on Poverty Law, Fall 2016; see: http://povertylaw.org/files/advocacy/early-childhood/SC_EarlyIntervention_1pgr_R1.4.pdf

[54] "Illinois Early Intervention," Fact Sheet, The Sargent Shriver National Center on Poverty Law, Fall 2016; See: http://povertylaw.org/files/advocacy/early-childhood/SC_EarlyIntervention_1pgr_R1.4.pdf

[55] "Illinois Early Intervention," Fact Sheet, The Sargent Shriver National Center on Poverty Law, Fall 2016; See: http://povertylaw.org/files/advocacy/early-childhood/SC_EarlyIntervention_1pgr_R1.4.pdf

[56] https://www.illinois.gov/hfs/SiteCollectionDocuments/HFSPerinatalReportfinalcompleted282018.pdf

[57] https://www.illinois.gov/hfs/SiteCollectionDocuments/HFSPerinatalReportfinalcompleted282018.pdf

[58] The perinatal report issued by HFS and the Illinois Department of Public Health (IDPH) on the status of prenatal and perinatal health care services: https://www.illinois.gov/hfs/MedicalProviders/MaternalandChildHealth/Pages/report.aspx.

[59] The perinatal report issued by HFS and the Illinois Department of Public Health (IDPH) on the status of prenatal and perinatal health care services: https://www.illinois.gov/hfs/MedicalProviders/MaternalandChildHealth/Pages/report.aspx.

total costs. VLBW births represent the lowest percentage of total births, at nearly 1.2 %, but they account for nearly 19% of total birth costs (prenatal care, delivery, postpartum, and infant's first year of life).[60] Conversely, approximately 2/3 of all births are normal outcome and account for only approximately 40% of total costs.[61]

Despite the availability of Medicaid and CHIP, from 2009-2010, 40 percent of mothers surveyed across 30 states reported that they delayed prenatal care because they lacked the money or insurance to pay for their care.[62] This problem is especially acute for immigrant women of reproductive age, with 27 percent of them being uninsured.[63] With maternal mortality on the rise, a bipartisan group of Senators support increasing federal funding to expand access to services that can prevent maternal death.[64] The proposed rule will cause immigrant women to choose between a path for legal permanent residency or comprehensive preventive Medicaid coverage, including pre-and postnatal health coverage. Immigrant women have already begun disenrolling or forging Medicaid benefits; this will inevitably lead to poor health outcomes for themselves, their baby, and to increased costs for the Medicaid program and for healthcare providers. A lack of prenatal care and nutrition assistance for mothers could have serious implications for their children, affecting their birth and early health outcomes. Negative outcomes would extend decades into the future, diminishing a future generation's opportunity to thrive in tangible and entirely preventable ways and affecting all Illinoisans as we face that generation's challenges as a state.[65] In addition to access to prenatal care, nutrition assistance also helps promote healthy birth outcomes. Researchers comparing the long-term outcomes of individuals in different areas of the country when SNAP expanded nationwide in the 1960s and early 1970s found that mothers exposed to SNAP during pregnancy gave birth to fewer low-birth-weight babies.[66] Expanding the programs in the public charge test to include programs such as SNAP and Medicaid/CHIP will put more babies--including those who are U.S.-born citizens--at risk of low birth weight and other problems — undermining public health while also potentially fueling higher health care costs at taxpayer expense.

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[60] The perinatal report issued by HFS and the Illinois Department of Public Health (IDPH) on the status of prenatal and perinatal health care services: https://www.illinois.gov/hfs/MedicalProviders/MaternalandChildHealth/Pages/report.aspx.

[61] The perinatal report issued by HFS and the Illinois Department of Public Health (IDPH) on the status of prenatal and perinatal health care services: https://www.illinois.gov/hfs/MedicalProviders/MaternalandChildHealth/Pages/report.aspx.

[62] The Kaiser Family Foundation, *Proposed Changes to "Public Charge" Policies for Immigrants: Implications for Health Coverage,* (Feb. 13, 2018), https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/.

[63] National Women's Law Center, *If You Care About Immigration, You Should Care About Reproductive Justice*, (Oct. 2016), available at https://nwlc.org/wp-content/uploads/2016/09/Immigration-Fact-Sheet.pdf

[64] Nina Martin, U.S. Senate Committee Proposes $50 Million to Prevent Mothers Dying in Childbirth (June 28, 2018). https://www.propublica.org/article/us-senate-committee-maternal-mortality-prevention-proposal

[65] Sharon Parrot, et al., *Trump "Public Charge" Rule Would Prove Particularly Harsh for Pregnant Women and Children*, Center on Budget and Policy Priorities, (May 1, 2018), *available at* https://www.cbpp.org/research/poverty-and-inequality/trump-public-charge-rule-would-prove-particularly-harsh-for-pregnant.

[66] Douglas Almond, Hillary Hoynes, and Diane Schanzenbach, "Inside the War on Poverty: The Impact of Food Stamps on Birth Outcomes," *The Review of Economics and Statistics*, 93(2), May 2011, https://www.mitpressjournals.org/doi/pdfplus/10.1162/REST_a_00089; and Hilary Hoynes, Diane Whitmore Schanzenbach, and Douglas Almond, "Long-Run Impacts of Childhood Access to the Safety Net," *American Economic Review*, 106(4):903–934, April 2016, https://pdfs.semanticscholar.org/c94b/26c57bb565b566913d2af161e555edeb7f21.pdf.

## The Proposed Rule Will have Negative Impact on Individuals Living With a Medical Condition

The proposed rule discriminates against lawful immigrants with medical conditions by denying them an opportunity to benefit from an adjustment in their immigration status equal to that available to immigrants without medical conditions.[67] Under the proposal, the Department will take an immigrant's medical condition into consideration, and look to whether such condition makes it more or less likely that the immigrant will become a public charge. Individuals who use non-cash public benefits, including Medicaid, which individuals with a medical condition rely upon disproportionately precisely because of their medical condition (and their frequent inability to access private health insurance due to their medical condition), may be deemed a public charge, even though their use of such benefits is perfectly legal, and may be critical to enabling them to continue to work and be self-sufficient.

Using a medical condition as a negative factor as the proposed rule does will have devastating consequences for many Illinoisans who have a chronic medical condition. Chronic disease is the major cause of death and disability in Illinois.[68] Six common chronic diseases – cancer, diabetes, heart disease, stroke, Alzheimer's disease, and pulmonary conditions – account for the majority of the 10 leading causes of death in the state and affect more than 6.7 million Illinoisans, more than half its population (Illinois Center for Health Statistics). By deeming the use of Medicaid a negative factor in the public charge determination, DHS would disproportionately target individuals with medical conditions.

## Immigrant's Fears About Using Medicaid will Deprive Financially Vulnerable Safety Net Providers of Vital Revenue

The fear created by this proposed rule would extend far beyond any individual who may be subject to the "public charge" test, this will discourage many immigrant families from accessing benefits for which they are eligible. This would include non-immigrant family members who would not be impacted by this rule directly, but may go without coverage due to fear. This will especially impact Illinoisans, where one out of every four children has an immigrant parent and over third (36%) of all children are enrolled in the state's Medicaid program.[69] Since 2010, the uninsured rate in Illinois has fallen from 13.8% to 7% in 2016.[70] These coverage gains have allowed Illinois's families to access regular health care and lead healthier lives. Healthy families are better able to assimilate and contribute to the U.S. economy, and it is vital that health center patients and their families continue to access medical care and other social services without fear of adverse immigration consequences.

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[67] 6 CFR 15.30(b)(1)(ii), (iii), (iv)

[68] Illinois Department of Public Health website, visited July 29, 2018, available at: http://www.dph.illinois.gov/topics-services/diseases-and-conditions/chronic-diseases

[69] Community Health Centers: Recent Growth and the Role of the ACA (Kaiser Family Foundation Issue Brief, 2017) https://www.kff.org/report-section/community-health-centers-recent-growth-and-the-role-of-the-aca-issue-brief/

[70] U.S. Department of Health and Human Services, Compilation of State Data on the Affordable Care ActKaiser Family Foundation State Health Facts, Uninsured Rates for Years 2013 and 2016 for Illinois Total Population, available at: https://www.kff.org/other/state-indicator/total-population/?currentTimeframe=3&selectedRows=%7B%22states%22:%7B%22illinois%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D

Given Illinois's large immigrant population and that an estimated one-quarter of the entire state population is either enrolled in Medicaid or uninsured, the proposed rule will have a devastating effect on the patient population served by Illinois's hospitals and community health centers and clinics.[71] Illinois is home to 1.76 million immigrants (people who did not hold U.S. citizenship at birth).[72] In Illinois, where 758,000 children has an immigrant parent[73], and an estimated half of all children are enrolled in the state's Medicaid program.[74] Illinois is home to the fifth largest number of immigrants in benefits-receiving families in the U.S.[75] The proposed rule unjustly and impermissibly targets states such as Illinois for harm.

Medicaid is an indispensable funding source for safety net hospitals and clinics, which are financially vulnerable. More than 35% of visits to safety-net hospitals are covered by Medicaid.[76] Medicaid is the single largest source of funding for community health centers in both Medicaid expansion and non-expansion states.[77] When a significant number of individuals who are eligible for Medicaid but choose to forgo or disenroll in that Medicaid coverage, not only will this result in negative short and long-term health outcomes for those individuals, but when those individuals inevitably get sick, have an accident, have a flare up with their medical condition or otherwise need health care, health care providers understably will want that eligible but unenrolled patient to have health coverage. According to the Kaiser Family Foundation, an estimated 2.1 million to 4.9 million Medicaid/CHIP enrollees nationally could disenroll, if the proposed rule leads to disenrollment rates between 15 percent and 35 percent.[78]

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[71] Kaiser Family Foundation State Data Profile for Illinois, Data on Total Coverage for the Population, available at: https://www.kff.org/other/state-indicator/total-population/?currentTimeframe=0&selectedRows=%7B%22states%22:%7B%22illinois%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D

[72] "Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use," Migration Policy Institute, (June 2018), available at: https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families .

[73] The share of children in FY2016 under age 18 who are foreign-born or reside with at least one foreign-born parent. Foreign-born is defined as either a U.S. citizen by naturalization or not a citizen of the U.S. Native-born is defined as born in the U.S., Puerto Rico, Guam, the U.S. Virgin Islands, or the Northern Marianas or born abroad of American parents. The foreign-born status of children not living with either parent is based solely on the status of the child and no other household member. Children living in subfamilies are linked to their parent(s) and not the householder. See: https://datacenter.kidscount.org/data/tables/115-children-in-immigrant-families?loc=15&loct=2#detailed/2/15/false/870,573,869,36,868,867,133,38,35,18/any/445,446

[74] see https://datacenter.kidscount.org/data/tables/7560-child-population-by-county?loc=15&loct=2#detailed/2/any/false/133,11,1/any/14695. see: https://www.illinois.gov/hfs/info/factsfigures/Program%20Enrollment/Pages/Statewide.aspx.

[75] "Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use," Migration Policy Institute, (June 2018), available at: https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families.

[76] Essential Data: Our Hospitals, Our Patients (America's Essential Hospitals 2017) https://essentialhospitals.org/wp-content/uploads/2017/06/AEH_VitalData_2017_Spreads_NoBleedCropMarks.pdf

[77] Community Health Centers: Recent Growth and the Role of the ACA (Kaiser Family Foundation Issue Brief, 2017) https://www.kff.org/report-section/community-health-centers-recent-growth-and-the-role-of-the-aca-issue-brief/

[78] Samantha Artiga, Raphael Garfield, and Anthony Damico "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid" (Washington, DC: Kaiser Family Foundation, 2018). https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaid/.

In Illinois, there are an estimated 388,000 non-citizens enrolled in the Illinois Medicaid Program.[79] The proposed rule could lead to disenrollment rates between 15 percent and 35 percent.[80] Therefore, statewide in Illinois between 58,200 (15% of 388,000) and 135,800 (35% of 388,000) non-citizens could disenroll from Medicaid due to the proposed rule. This is likely an underestimate because it does not take into account the broad chilling effect on all immigration statuses, including U.S. citizen children who are dependents of non citizens, and including naturalized citizens. In Illinois, 442,000 U.S. citizen children have a non-citizen parent.[81] An estimated 224,000 of these children are enrolled in the Medicaid program. Using the Kaiser projected disenrollment percentages, an additional 33,600 (15% of 224,000) to 78,400 (35% of 224,000) children could disenroll in Medicaid in Illinois due to the proposed rule. Again, this is likely an underestimate of children and others who would likely disenroll in Medicaid due to the fear and confusion that this proposed rule will create in Illinois and nationally.

When the number of uninsured starts to increase, the level of uncompensated care provided by those institutions also increases--sometimes leading to unsustainable amounts and leading to hospital closures. Studies confirm a strong relationship between Medicaid coverage and hospital closures, with hospitals in Medicaid expansion states 84% less likely to close than those in non-expansion states.[82] The impacts of hospital closures are far-reaching. Hospital closures affect access to care for all residents of their service areas.[83] The effects of hospital closures extend beyond reduced access to healthcare and poorer health outcomes. Hospitals are major employers and purchasers of goods and services. The loss of jobs associated with a hospital closure is especially devastating in rural areas, which have smaller populations and a historic reliance on declining industries.[84] Moreover, some industries and employers will not locate in an area without a hospital, leaving communities without hospitals unable to attract some employers.[85]

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[79] Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use, Jeanne Batalova, Michael Fix, Mark Greenberg, (June 2018), 2014-2016 data, available at: https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families.

[80] Samantha Artiga, Raphael Garfield, and Anthony Damico "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid" (Washington, DC: Kaiser Family Foundation, 2018). https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaid/.

[81] Samantha Artiga, Anthony Damico, and Raphael Garfield, "Potential effects of Public Charge Changes on Health Coverage for Citizen Children," (Washington, DC: Kaiser Family Foundation, May 2018), available at: https://www.kff.org/disparities-policy/issue-brief/potential-effects-of-public-charge-changes-on-health-coverage-for-citizen-children/. Non-citizen includes

[82] Health Affairs Jan 2018 https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2017.0976 Understanding The Relationship Between Medicaid Expansions And Hospital Closures

[83] Jane Wishner, Patricia Solleveld, Robin Rudowitz, Julia Paradise, and Larisa Antonisse, A Look at Rural Hospital Closures and Implications for Access to Care: Three Case Studies (Kaiser Family Foundation, July 2016), www.kff.org/medicaid/issue-brief/a-look-at-rural-hospital-closures-and-implications-for-access-to-care

[84] Id (Jane Wishner, Patricia Solleveld, Robin Rudowitz, Julia Paradise, and Larisa Antonisse, A Look at Rural Hospital Closures and Implications for Access to Care: Three Case Studies (Kaiser Family Foundation, July 2016), www.kff.org/medicaid/issue-brief/a-look-at-rural-hospital-closures-and-implications-for-access-to-care)

[85] Id (Jane Wishner, Patricia Solleveld, Robin Rudowitz, Julia Paradise, and Larisa Antonisse, *A Look at Rural Hospital Closures and Implications for Access to Care: Three Case Studies* (Kaiser Family Foundation, July 2016), www.kff.org/medicaid/issue-brief/a-look-at-rural-hospital-closures-and-implications-for-access-to-care/.)

Illinois has over 200 hospitals, including 40 safety net hospitals.[86] More than 40% of Illinois hospitals operate on a slim margin--defined as less than two percent according to the Illinois Hospital Association.[87] Illinois hospitals and safety net system in particular cannot afford to lose one dollar of federal medicaid reimbursement due to Medicaid disenrollment from this proposed rule. Only 17 cents of each dollar in state Medicaid payments to hospitals come from State General Revenue Funds. The vast majority of those payments – 83 cents of each dollar – come from federal matching funds from hospital Medicaid spending and from the Hospital Assessment Program.[88] Illinois should be maximizing federal funding support and not reducing it, as this proposed rule would surely due when immigrant families forgo or disneroll themselves and/or their family members in Medicaid. At a time when Illinois is facing a massive budget deficit and public health crises, such as the opioid crisis that is killing nearly 2-thousand Illinoisans every year and devastating the lives of many other Illinoisans, Illinois needs every tool and dollar, especially through the Medicaid program.[89]

There is a direct relationship between the number of patients covered by Medicaid in a safety-net facility's service area and the facility's financial health. Community Health Centers in Medicaid expansion states have more locations, see more patients and have better provider to patient ratios as compared to non-expansion states.[90] Illinois is home to 44 community health centers operating over 350 sites that collectively serve over 1.3 million patients a year--78% of whom fall under the federal poverty level.[91] This means that the vast majority of immigrant patients served by Illinois's community health centers would fall under the 125% FPL income threshold included in the proposed rule's public charge assessment, and would certainly fall under the 250% FPL income/assets threshold that the proposed rule consider the only "heavily weighed positive factor". Moreover over 20% of these 1.3 million patients have no health insurance and over 60% of these patients are enrolled in Medicaid, which is considered a negative factor--and current or past enrollment within 36 months is a heavily weighed negative factor-- in the proposed rule.[92] Lastly, a significant portion of the patients seen at Illinois's community health centers have a chronic medical condition;[93] the presence of this condition coupled with enrollment in Medicaid is considered a negative factor in the proposed rule's public charge assessment. The proposed rule would therefore have a devastating effect on many immigrant patients served by Illinois community health centers.

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[86] available at: https://www.team-iha.org/files/non-gated/advocacy/2018-state-advocacy-agenda.aspx

[87] Illinois Health and Hospital Association, 2018 State Advocacy Agenda Report, available at: https://www.team-iha.org/files/non-gated/advocacy/2018-state-advocacy-agenda.aspx

[88] Testimony from IHA Senior Vice President of Government Relations, David Gross, of the Illinois Health and Hospital Association, available at: https://www.team-iha.org/advocacy-policy/state-issues

[89] Testimony from IHA Senior Vice President of Government Relations, David Gross, of the Illinois Health and Hospital Association, available at: https://www.team-iha.org/advocacy-policy/state-issues

[90] Community Health Centers: Recent Growth and the Role of the ACA (Kaiser Family Foundation Issue Brief, 2017) https://www.kff.org/report-section/community-health-centers-recent-growth-and-the-role-of-the-aca-issue-brief/

[91] Illinois Primary Health Care Association, available at: http://www.iphca.org/Portals/0/Documents/IL_State_EconomicEngine_2016.pdf?ver=2016-06-14-093531-727

[92] Illinois Primary Health Care Association, available at: http://www.iphca.org/Portals/0/Documents/IL_State_EconomicEngine_2016.pdf?ver=2016-06-14-093531-727

[93] Illinois Primary Health Care Association, available at: http://www.iphca.org/Portals/0/Documents/IL_State_EconomicEngine_2016.pdf?ver=2016-06-14-093531-727

## The Proposed Rule Weakens Our State Workforce, Including Illinois' Healthcare Workforce, and particularly the Workforce Caring for Elderly/Disabled Populations

Illinois is home to nearly 1.8 million immigrants; they serve as everything from physicians to ultrasound techs to home health aides, making them critical contributions to the healthcare workforce and to the state's economic success overall. In Illinois, the labor force participation rate for immigrants is 68.1 percent, which is higher than the state's total labor force participation rate which is 65.6%. In Illinois, immigrants are employed in every major industry sector but the manufacturing sector employs the largest number of immigrants. While 14% of the state's population, immigrants make up 22% of the entrepreneurs in Illinois (n=127,333); their businesses generated $2.6 billion in business income in 2014 for the state.[94] Over a quarter million people are employed by immigrant owned firms in Illinois (n=281,090)[95] Over half of Fortune 500 companies in Illinois were founded by immigrants or their children (55.6%). And State/Local/Federal Taxes paid by Illinois immigrants in 2016 totaled an estimated $16.7 Billion dollars.[96] All of this economic activity translated into total spending power for Illinois immigrants of an estimated $44.1 Billion dollars.[97]

However the Proposed Rule aims to weaken the work supports (Medicaid and SNAP) that many immigrants use in order to facilitate their ability to work and/or attend school and be productive and healthy. More than 91 percent of all adults active in the labor force who would be affected by the public charge rule are employed.[98] More than 1.4 million people likely to be affected by the public charge rule have at least some college education, including almost 150,000 workers in the education and health services industries.[99] The total annual income of workers who would be affected by the public charge rule is more than $96.4 billion.[100] Should they leave the United States, our economy would suffer negative indirect economic effects of more than $68 billion dollars. The total cost to the U.S. economy could therefore amount to $164.4 billion.[101]

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[94] New American Economy, State Data Profiles, available at: https://www.newamericaneconomy.org/locations/illinois/

[95] New American Economy, State Data Profiles, available at: https://www.newamericaneconomy.org/locations/illinois/

[96] New American Economy, State Data Profiles, available at: https://www.newamericaneconomy.org/locations/illinois/

[97] New American Economy, State Data Profiles, available at: https://www.newamericaneconomy.org/locations/illinois/

[98] Economic Impact of Proposed Rule Change: Inadmissibility on Public Charge Grounds, The New American Economy, October 11, 2018, available at: https://research.newamericaneconomy.org/report/economic-impact-of-proposed-rule-change-inadmissibility-on-public-charge-grounds/

[99] Economic Impact of Proposed Rule Change: Inadmissibility on Public Charge Grounds, The New American Economy, October 11, 2018, available at: https://research.newamericaneconomy.org/report/economic-impact-of-proposed-rule-change-inadmissibility-on-public-charge-grounds/

[100] Economic Impact of Proposed Rule Change: Inadmissibility on Public Charge Grounds, The New American Economy, October 11, 2018, available at: https://research.newamericaneconomy.org/report/economic-impact-of-proposed-rule-change-inadmissibility-on-public-charge-grounds/.

[101] Economic Impact of Proposed Rule Change: Inadmissibility on Public Charge Grounds, The New American Economy, October 11, 2018, available at: https://research.newamericaneconomy.org/report/economic-impact-of-proposed-rule-change-inadmissibility-on-public-charge-grounds/.

Moreover, **t**he proposed rule would make it effectively impossible for immigrants to come to the U.S. to work as home health aides or as staff at nursing homes or assisted living facilities. Because at least one million aides (one of every four) is an immigrant, the Proposed Rule would dry up a major source of personal care for older adults or younger people with disabilities. At a time when the pool of available family caregivers is shrinking dramatically, the long-term result could be a caregiving catastrophe paradox of our caregiving system. We pay the people who care for our aging parents and other disabled relatives so little that they must rely on public supports such as SNAP and Medicaid to survive. Yet the cost of long-term care is so high that most Americans already can't afford it. In that environment, the Proposed Rule would effectively foreclose immigrant health care workers from entering and/or remaining in the U.S. thereby drastically decreasing an important source of direct care workers.

- 1 in 4 aides (home health aides or as staff at nursing homes or assisted living facilities) is an immigrant.[102]
- They earn low-wages (majority < 125% FPL) so rely on public supports like SNAP/Medicaid: 42% of immigrant direct care workers access public benefits. Two-thirds are Medicaid beneficiaries and more than half receive food and nutrition assistance.[103]
- Immigrants are critical: Without new immigrants, there will be far too few workers to provide personal care. This at a time when the U.S. population is rapidly aging and the demand for aides is rising.[104]

More specifically, among home health aides, 25% are foreign-born and a third receive public benefits.[105] If these workers forego health coverage, they will miss more days of work, burdening their employers and the vulnerable people for whom they provide care.[106] Moreover, it is accepted wisdom that there will be an increased need for home care workers as the U.S. population ages.[107] If candidates for these low-wage jobs are denied admission on public charge grounds, or are unable to extend/ change their nonimmigrant status due to low incomes, vulnerable seniors may be forced to leave their homes and receive more expensive care in nursing homes.

The proposed rule would disproportionately affect low-paid workers already in the country or seeking to enter. Nursing home and home health aides, for example, are often paid low wages and have few employer-provided benefits, both of which are factors that could be viewed negatively in a public charge determination. Making it more difficult for workers like these to enter or stay in the country could impact our healthcare system as well.

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[102] Trump's Latest Immigration Curbs Threaten Older Adults Who Need Personal Care, Forbes, Howard Gleckman, Sept. 26, 2018, available at: https://www.forbes.com/sites/howardgleckman/2018/09/26/trumps-latest-immigration-curbs-threaten-older-adults-who-need-personal-care/#490ea1be457e

[103] Trump's Latest Immigration Curbs Threaten Older Adults Who Need Personal Care, Forbes, Howard Gleckman, Sept. 26, 2018, available at: https://www.forbes.com/sites/howardgleckman/2018/09/26/trumps-latest-immigration-curbs-threaten-older-adults-who-need-personal-care/#490ea1be457e

[104] Trump's Latest Immigration Curbs Threaten Older Adults Who Need Personal Care, Forbes, Howard Gleckman, Sept. 26, 2018, available at: https://www.forbes.com/sites/howardgleckman/2018/09/26/trumps-latest-immigration-curbs-threaten-older-adults-who-need-personal-care/#490ea1be457e

[105] Wendy E. Parmet and Elizabeth Ryan, New Dangers For Immigrants And The Health Care System, Health Affairs Blog, April 20, 2018. https://www.healthaffairs.org/do/10.1377/hblog20180419.892713/full

[106] Allan Dizioli and Roberto Pinheiro, Health Insurance As a Productive Factor (March 2012), https://pdfs.semanticscholar.org/998c/e59138c5ef43be4e20ed5f6fdb8900e34260.pdf.

[107] See E. Tammy Kim, Americans Will Struggle to Grow Old At Home, Bloomberg Businessweek, February 9, 2018.

Lastly, children enrolled in Medicaid in their early years not only do better in childhood than children without health insurance, but also have better health, educational, and employment outcomes in adulthood.[108] Additionally, uninsured children are less likely to receive preventive care and necessary treatment when they are sick or injured, and are generally less healthy compared to children with health insurance.[109] Thus, treating health programs as a negative factor as the the public charge assessment in the proposed rule does--would have the paradoxical effect of making children less able to contribute as adult workers.

## The Proposed Rule Could Have a Negative Impact on Marketplace Coverage

Although Marketplace subsidies are not included in the rule, immigrants could drop Marketplace coverage too as a result of the chilling effect, adding to uncompensated care volumes and potentially impacting the Marketplace risk pool in ways that could drive up costs for other consumers. In Illinois over 334,979 Illinoisans enrolled in Marketplace coverage during the 2018 Open Enrollment Period through the Get Covered Illinois Marketplace which uses the federal healthcare.gov federal platform.[110] States and localities also could face costs associated with implementing the rules, including costs to notify program applicants about the consequences of using benefits and to update systems to better track benefit use and, potentially, share that information with DHS. State efforts over the past five years to streamline eligibility and enrollment processes for Medicaid and Marketplace tax credits (as required under the Affordable Care Act and implementing regulations) and to coordinate eligibility and enrollment across multiple benefit programs for seamless and continuous access to public benefits could now be problematic for immigrants seeking to minimize use of public benefits if they are enrolled in coverage that could count against them. States may incur costs related to reworking their Medicaid, human services and/or Marketplace IT systems and processes.

## The Proposed Rule Would Negatively Impact Individuals Living with Disabilities

The proposed rule would create significant hardships for and discriminate against lawful immigrants with disabilities by denying them an opportunity to benefit from an adjustment in their immigration status equal to that available to immigrants without disabilities.[111] Under the proposal, the Department will consider a wide range of medical conditions, many of which constitute disabilities, as well as the existence of disability itself, in determining whether an immigrant is likely to become a public charge. Although DHS states that disability will not be the "sole factor,"in that determination, the Department

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[108] Rourke O'Brien and Cassandra Robertson, *Medicaid and Intergenerational Economic Mobility*, University of Wisconsin—Madison, Institute for Research on Poverty, 2015, https://search.library.wisc.edu/catalog/9910223409002121; Andrew Goodman-Bacon, *The Long-Run Effects of Childhood Insurance Coverage: Medicaid Implementation, Adult Health, and Labor Market Outcomes,* NBER Working Paper No. 22899, 2016, www.nber.org/papers/w22899.

[109] Amanda R. Kreider, Benjamin French, Jaya Aysola, et al., "Quality of Health Insurance Coverage and Access to Care for Children in Low-Income Families," *JAMA Pediatrics* 170 (2016).

[110] 2018 Marketplace Open Enrollment Period Public Use Files, CMS. The 2018 Open Enrollment Period for the Health Insurance Exchanges ran between November 1, 2017 and December 15, 2017. Data available at: https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Marketplace-Products/2018_Open_Enrollment.html.

[111] 6 CFR 15.30(b)(1)(ii), (iii), (iv)

fails to offer any accommodation for individuals with disabilities and instead echoes the types of bias and "archaic attitudes" about disabilities that the Rehabilitation Act was meant to overcome.[112]

The proposal would also discriminate against people with disabilities by defining an immigrant as a public charge for using (for the specified periods and amounts) non-cash benefits which individuals with disabilities rely on disproportionately, often due to their disability and the discrimination they experience because of it. For example, about one-third of adults under age 65 enrolled in Medicaid have a disability, compared with about 12% of adults in the general population. Many of these individuals are eligible for Medicaid, and unable to obtain private insurance, precisely because of their disability. Likewise, more than one-quarter of people who use SNAP benefits for nutritional support are also disabled. Many of these individuals rely upon such benefits so that they can continue to work, stay healthy, and remain productive members of the community.

By deeming immigrants who use such programs as a public charge, the proposed rule will disparately harm individuals with disabilities and impede their ability to maintain the very self-sufficiency the Department purports to promote and which the Rehabilitation Act sought to ensure. Because many critical disability services are only available through Medicaid, the rule will prevent many people with disabilities from getting needed services that allow them to manage their medical conditions, participate in the workforce and improve their situation over time.

## The Proposed Rule Will Negatively Impact Medicaid in Schools

This proposed rule will have a profoundly negative impact on the one in four children who live in a family with at least one immigrant parent because it encourages families that qualify for healthcare benefits--especially Medicaid--to forego or disenroll from them. Instead of crafting policies that incentivize greater access for children to Medicaid and healthcare services—this proposed rule will reduce the number of children who can and should access federal assistance to receive healthcare services. Schools deliver health services effectively and efficiently to children since school is where kids spend most of their days. Increasing access to health care services through Medicaid improves health care and educational outcomes for all students including immigrant children. Providing health and wellness services for immigrant children who need through school-based Medicaid programs helps enable these children to become employable, attend higher-education and be productive contributors to American society.

By assessing the use of Medicaid as a negative factor in the proposed public charge assessment, this proposed rule will have immediate negative repercussions for children's healthcare access inside and outside of school. While school-based services are technically excluded from impacting a child's future status in the U.S. by this proposed rule, school districts are already challenged in annually enrolling children into the Medicaid/CHIP program and obtaining parental consent that allows districts to be reimbursed by Medicaid for the direct healthcare services they provide children. Since the news of the proposed rule was published many months ago, some districts are reporting that parents who are fearful about the impact of the public charge rule are proactively revoking consent for districts to bill Medicaid for costly services under the Individuals Disabilities Education Act (IDEA) that schools provide to children who qualify for special education. Medicaid reimbursement for special education services is a critical funding source for school districts. Districts with large numbers of immigrant children will

[112] School Bd. of Nassau Cty. v. Arline, 480 U.S. 273, 279 (1987).

struggle to meet their commitments under IDEA if parents are scared to give their consent to billing Medicaid.

If this proposed rule becomes final, there will be a significant number of immigrant parents refusing to consent to allowing districts to bill Medicaid for healthcare or special education expenses for their children. As a result, districts that rely on Medicaid to meet the healthcare and special education needs of immigrant children will have to dip into local dollars to continue ensuring immigrant children are healthy enough to learn and receive the special education services they are entitled to under IDEA. The loss of Medicaid funding will place a considerable burden on school districts to raise local revenue through taxes or reallocate existing local resources to fill the gaps left by substantial decreases in Medicaid reimbursement. If new revenue cannot be raised by districts then the loss of Medicaid funding could compromise educational quality and resources for all children regardless of immigration status or income level.

## The Proposed Rule, by forcing Families to Forgo or Disenroll in Medicaid, Will Cause Individuals and Families to Becomes Financially Unstable

The negative factors outlined in the rule ignore the impact of access to public benefits and family support as positive factors in empowering future self-sufficiency. The proposed rule does not recognize that receipt of benefits that cure a significant medical issue or provide people with the opportunity to complete education and training are highly significant positive factors that contribute to future economic self-sufficiency. There is a large body of research evidence on the positive long-term effects of receipt of many of the benefits that are included in the public charge determination, including SNAP and Medicaid.

Like all insurance, Medicaid helps protect people from medical costs and debt. That helps improve enrollees' financial security. Arguments that disenrolling from coverage will help improve individuals' economic security do not hold up. Medicaid coverage in and of itself improves individuals' financial security. Forcing Immigrants to choose between Medicaid and their immigration status will hurt Illinois families' financial security. Studies of the impact of Medicaid expansion on financial health found that When Oregon extended Medicaid coverage to previously uninsured low-income adults in 2008 (before the Medicaid expansion), the individuals gaining coverage reported improved financial security.[113] Greater financial security and stability reduces individuals' risk of homelessness and is a foundation for moving out of poverty.[114] The proposed rule, by forcing immigrants to choose between Medicaid coverage and pusing their legal permanent residency, will cause a significant number of individuals and families to become financially unstable and greatly increase their probability for filing personal bankruptcy due to medical debt and/or becoming homeless and increasing poverty.

## The Proposed Rule will Force Families to Forgo/Disenroll in Medicaid, thereby Decreasing Access to Essential Oral Health Coverage and Harming Immigrants' Ability to Attend School or Work

[113] The Effects of Medicaid Coverage — Learning from the Oregon Experiment, Katherine Baicker, Ph.D., and Amy Finkelstein, Ph.D., New England Journal of Medicine, Aug. 25, 2011, available at: https://www.nejm.org/doi/full/10.1056/NEJMp1108222.

[114] National Health Council for the Homeless, available at: https://www.nhchc.org/2013/05/oregon-study-shows-obtaining-medicaid-improves-financial-security/

Illinois medicaid provides dental coverage for children and for adults. Dental coverage improves Medicaid enrollees' overall health *and* employability. Forcing families to forgo dental coverage is penny-wise and pound-foolish, and runs counter to any efforts to increase self-sufficiency. Untreated dental disease can have a negative impact on overall health. Difficulty eating, sleeping, and chronic pain all have significant health implications beyond oral health. Poor oral health is also linked to complications for people with diabetes and heart and lung disease, and to poor birth outcomes. And untreated dental disease is more than twice as common among lower-income adults as among adults with higher incomes.[115] For lower-income state residents, dental coverage can help improve overall health, and ultimately lower Medicaid costs.

Access to dental services can improve employment prospects. Twenty-nine percent of low-income adults—nearly twice the rate of those with higher incomes—report that the state of their mouth negatively affects their ability to interview for a job.[116] By helping people improve their oral health and appearance, dental coverage can help promote enrollees' employment opportunities. Reducing their access to dental care can make it harder for them to get a job.

In Illinois there has already been a decrease in demand for free or very low-cost oral health services by immigrants who are enrolled in medicaid coverage, due to the fear of the proposed public charge rule and the federal administration's immigration policies more generally. This decrease in accessing oral health treatment for severe dental needs (including having more than five cavities, severe pain, etc.) was seen acutely in Latino neighborhoods as compared with African-American neighborhoods, when controlling for all factors.[117] Specifically, a review of program participation data found that, among children living in these three Latino neighborhoods, program participation fell by 25% in the 2016-2017 academic year as compared to other neighborhoods in the city.[118] What has been shown decisively in these zip code areas would spread throughout Illinois if the proposed rule becomes final: families' access to oral health care would decrease thereby increasing the likelihood of absence from school and work.

## The Proposed Rule would Effectively Override State Options to Extend Coverage

Currently, under federal guidelines, lawfully residing immigrants have a five-year waiting period to qualify for Medicaid and CHIP coverage.[119] However, recognizing the importance of providing prenatal and early childhood health and nutrition support, 29 states, including Illinois, provide Medicaid coverage

[115] Access to Denta Care in Medicaid: Spotlight on Non-Elderly Adults, Kaiser Family Foundation, Elizabeth Hinton, Julie Paradise, (2016), available at: https://www.kff.org/medicaid/issue-brief/access-to-dental-care-in-medicaid-spotlight-on-nonelderly-adults/

[116] Oral health in America: A report of the Surgeon General, available at: https://www.nidcr.nih.gov/research/data-statistics/surgeon-general

[117] Anti-Immigrant Policies are Hurting Children's Oral Health, Children's Dental Project, may 2018, available at: https://www.cdhp.org/blog/506-anti-immigrant-policies-are-hurting-children-s-oral-health

[118] Anti-Immigrant Policies are Hurting Children's Oral Health, Children's Dental Project, may 2018, available at: https://www.cdhp.org/blog/506-anti-immigrant-policies-are-hurting-children-s-oral-health

[119] The Kaiser Family Foundation, New Option for States to Provide Federally Funded Medicaid and CHIP Coverage to Additional Immigrant Children and Pregnant Women, (July 10, 2009), http://kff.org/medicaid/fact-sheet/new-option-for-states-to-provide-federally/.

to lawfully residing children and/or pregnant women without a five-year waiting period.[120] Additionally, 21 states, including Illinois, use CHIP funding to provide coverage for income-eligible pregnant women regardless of immigration status.[121] Sixteen of these states, including Illinois, also provide prenatal care to immigrant women who are not income eligible for Medicaid and/or CHIP under the CHIP "unborn child" option.[122] This allocation of federal and state funding for health and nutrition support, specifically for pregnant women and children, shows direct state effort to ensure the health and well-being of these groups where federal policy allows. The proposed policy would cause immigrant parents seeking citizenship to drop not only federal supports, but also these important state supports, thereby burdening state economies with unpaid medical bills and a workforce with increasingly poor education and health.

## The Proposed Rule Would Increase Food Insecurity and Hunger Among Immigrant Families and Children, Resulting in Negative Short- and Long-term Outcomes

The new rule would punish immigrants if they receive food assistance through the Supplemental Nutrition Assistance Program (SNAP) by jeopardizing their ability to stay in the United States - hurting the ability of our friends and neighbors to put food on the table. This will increase hunger throughout immigrant communities, putting the health and well-being of children at risk. Federal nutrition programs like SNAP were designed by Congress to be there for all citizens and eligible legal immigrants when they fall on hard times. This rule undermines congressional intent and our longstanding federal commitment to helping those who struggle to have enough healthy food.

In Illinois, there are more than 185,000 people living in families with noncitizens that receive SNAP.[123] An analysis of potential impact on children reveals that there are 94,000 citizen children in Illinois who receive SNAP who have a non-citizen parent.[124] Even though all of those people may not be technically affected by the public charge rule changes – there is a chilling effect that is likely to impact this broader group and in some cases their citizen children.

[Talk about how your organization currently works to fight hunger in the community and how this will impede your work and harm the people you serve.]

Investing in nutrition and other essential needs keeps children learning, parents working, families strong, and allows all of us to contribute fully to our communities. The policies articulated in the

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[120] Healthcare.gov, Coverage for Lawfully Present Immigrants, (June 15, 2018), https://www.healthcare.gov/immigrants/lawfully-present-immigrants/.

[121] The Kaiser Commission on Medicaid and the Uninsured, Where Are States Today? Medicaid and CHIP Eligibility Levels for Children, Pregnant Women, and Adults, (Mar. 28, 2018), https://www.kff.org/medicaid/fact-sheet/where-are-states-today-medicaid-and-chip/.

[122] The Kaiser Commission on Medicaid and the Uninsured, Where Are States Today? Medicaid and CHIP Eligibility Levels for Children, Pregnant Women, and Adults, (Mar. 28, 2018), https://www.kff.org/medicaid/fact-sheet/where-are-states-today-medicaid-and-chip/.

[123] Migration Policy Institute, "Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use", 2018, https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families

[124] Kaiser Family Foundation, "Issue Brief: Potential Effects of Public Charge Changes on Health Coverage for Citizen Children", 2018, http://files.kff.org/attachment/Issue-Brief-Potential-Effects-of-Public-Charge-Changes-on-Health-Coverage-for-Citizen-Children

proposed rule would terrify immigrant families and deter immigrant families from seeking the help they need to lead a healthy and productive life. By the Department's own admission, the rule "has the potential to erode family stability and decrease disposable income of families and children because the action provides a strong disincentive for the receipt or use of public benefits by aliens, as well as their household members, including U.S. children." Targeting low-income families will only exacerbate hunger and food insecurity, unmet health care needs, poverty, homelessness, and other serious problems. If it moves forward, the rule will have ripple-effects on the health, development, and economic outcomes of generations to come.

SNAP helps families and children thrive. The value of access to public benefits has been well-documented. Multiple studies confirm that early childhood or prenatal access to SNAP improves health and other positive outcomes. Children of immigrants who participate in SNAP are more likely to be in good or excellent health, be food secure, and reside in stable housing. Compared to children in immigrant families without SNAP, families with children who participate in the program have more resources to afford medical care and prescription medications.[125] An additional year of SNAP eligibility for young children with immigrant parents is associated with significant health benefits in later childhood and adolescence.[126]

[Share a story about how you seen SNAP fighting hunger and supporting families in your community.]

The proposed regulation would make—and has already made—immigrant families afraid to seek programs that support their basic needs. The proposal could prevent immigrants from using the programs their tax dollars help support, preventing access to healthy, nutritious food that helps families and children to be healthy and to thrive. The proposed changes will also have consequences well beyond the immigrant families to whom they apply. Local charities and emergency systems will be strained as families turn to emergency rooms, food banks and shelters for help. Schools will be impacted by children who show up to class with empty stomachs, unable to concentrate and learn.

## The Proposed Rule would create tremendous administrative burdens on the agencies, such as the Illinois Department of Human Services (IDHS) and the Illinois Department of Healthcare and Family Services (HFS), which administer Medicaid/CHIP and SNAP programs.

The Illinois Department of Human Services (IDHS) and the Illinois Department of Healthcare and Family Services (HFS) are already under significant administrative pressure in the wake of a 2-year budget impasse, historically low caseworker staffing, closure of local Family Community Resource Center (FCRC) and the implementation of the Integrated Eligibility System (IES) II in October. The state agencies are already understaffed and cannot respond to the inquiries they currently get from applicants and recipients--wait times in local office and on the toll free assistance line are regularly over 4 hours. The state agencies will not be able to respond to the onslaught of questions and concerns that we anticipate will be coming if the rule is finalized.

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[125] Children's Health Watch, Report Card on Food Security and Immigration: Helping Our Youngest First-Generation Americans To Thrive, 2018.

[126] Chloe N. East, "The Effect of Food Stamps on Children's Health: Evidence from Immigrants' Changing Eligibility," Working Paper, 2017, http://www.chloeneast.com/uploads/8/9/9/7/8997263/east_fskids_r_r.pdf

**PROTECTING IMMIGRANT FAMILIES-ILLINOIS (PIF-IL):**
**Template Comment for Healthcare and Public Health**

The proposed rule would pressure large numbers of immigrants and their families to question enrolling in vital programs such as nutrition assistance, health coverage and housing that their families are eligible for and need. Because the rules for determining whether someone is a "public charge" are technical and the circumstances under which such a determination is made are often confusing, the questions from families would likely exceed by a sizable amount the number that would ultimately be subject to a "public charge" determination. Addressing these questions and dealing with the overall administrative burden created by this rule will result in an increased workload that will overwhelm Illinois's already taxed human services agencies.

Government agencies--particularly HFS and IDHS but also public health agencies and housing agencies--will need to dedicate substantial amounts of resources to the following issues:

- *Need to provide immigrants with documentation regarding their history of benefit receipt.* The draft form I-944, Declaration of Self-Sufficiency, instructions provided with the proposed rule direct individuals to provide documentation if they have ever applied for or received the listed public benefits in the form of "a letter, notice, certification, or other agency documents" that contain information about the exact amount and dates of benefits received.[127] This new and unprecedented requirement will generate a huge workload for HFS and IDHS and potentially other government agencies, and in many cases may require access to information that has been archived from no longer functional eligibility systems that have been replaced.
- *Responding to consumer inquiries related to the new rule.* In addition, HFS and IDHS and other agencies will have to prepare to answer consumer questions about the new rule. They will experience increased call volume and traffic from consumers concerned about the new policies. Advising a family on whether they would be subject to a public charge determination and how receipt of various benefits might play out can require technical knowledge of immigration statuses. Yet, state and local agencies will be put in an impossible position when answering questions if they simply tell all consumers that they must speak to an immigration attorney to get their questions answered about the impact of access benefits on their immigration status. And such advice would likely deter eligible people from enrolling in programs, including many who would never be subject to a public charge determination. Moreover, people who seek public benefits are also unlikely to be able to afford to seek legal counsel to see if getting services will jeopardize their family's immigration goals. The agencies' staff will need to be prepared to provide information in multiple languages as well.
- *Increased "churn" among the caseload.* As consumers learn about the new rule, some families will terminate their participation programs as already experienced in response to draft public charge-related proposed rule changes being leaked to the media.[128] But, because these programs meet vital needs for families, some of these families would likely return to the caseload, resulting in duplicative work for agencies that will experience a new kind of churn in their caseloads. Some families may return if they come to understand that they are not subject to a public charge determination, for example, if they have refugee status. Others may re-apply when circumstances become even more dire, for example a child may be withdrawn from Medicaid coverage, but without treatment—such as asthma medication—the child's condition may worsen, and the family will re-enroll the child even though they are fearful the act may jeopardize a family member's chance to become a lawful permanent resident. This on again off

[127] https://www.regulations.gov/document?D=USCIS-2010-0012-0047

[128] Emily Baumgaertner, "Spooked by Trump Proposals, Immigrants Abandon Public Nutrition Services," New York Times, March 6, 2018, https://www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html

again approach to benefit enrollment—often referred to as churn—not only yields negative results for families, it also results in duplicative work for state and local agencies. Churn is expensive for state, in one study of SNAP-related churn, the costs averaged $80 for each instance of churn that requires a new application.[129] In Illinois, this burden will be particularly acute and devastating as both HFS and IDHS have only recently launched new technology systems for applications/renewals/redeterminations.

- *Modifying existing communications and forms related to public charge.* For almost twenty years, agencies have worked under the consistent and clear rules about when a consumer's use of benefits could result in a negative finding in their public charge determination. Agencies have incorporated these messages on a variety of consumer communications including application, application instructions, website, posters used in lobbies, in notices and in scripts and trainings for staff. All of these consumer communications will have to be identified and taken down and as noted above, the new rules would be so far reaching and complicated, it's unclear states could replace them with accurate messages. Moreover, given the nature of the audience for the communications and forms, these will need to be disseminated with accurate information in professionally translated languages that serve the state's population. In Illinois, these communications and forms will need to be provided by professionally translated services in multiple languages.
- *Undermining adjunctive eligibility for WIC.* Congress permitted WIC to presume any individual on Medicaid, SNAP, or TANF to be income-eligible for WIC, thus reducing the paperwork burden during WIC certification. In 2016, 74.9% of WIC participants were eligible for WIC due to eligibility for another program. A National WIC Association survey estimated significant increases in administrative expenditures on the certification process if adjunctive eligibility was undermined. Due to WIC's funding formula, increased administrative expenditures will also result in decreased funding for WIC's nutrition education, breastfeeding support, and client services. WIC complements the work of Medicaid and SNAP to ensure healthy families with adequate access to nutritious foods. Congress has recognized that connection by authorizing adjunctive eligibility, which has helped to reduce paperwork burdens on both clinics and participants, freeing up WIC funding to be used for nutrition education and breastfeeding support. The inclusion of Medicaid or SNAP in public charge review would undercut WIC's efforts to improve efficiency, streamline certification processes, and focus WIC services on its core public health mission.

Furthermore, the inclusion of Medicaid and SNAP in public charge review will undermine state efforts to streamline enrollment processes between different public assistance programs. Certain states have explored universal online applications that permit an individual to apply for or pre-screen eligibility for multiple public assistance programs at one time.[130] The proposed rule would permit immigration

[129] Mills, Gregory, Tracy Vericker, Heather Koball, Kye Lippold, Laura Wheaton, Sam Elkin,"Understanding the Rates, Causes, and Costs of Churning in the Supplemental Nutrition Assistance Program (SNAP) - Final Report," Prepared by Urban Institute for the US Department of Agriculture, Food and Nutrition Service, November 2014, https://fns-prod.azureedge.net/sites/default/files/ops/SNAPChurning.pdf

[130] Urban Institute, "Changing Policies to Streamline Access to Medicaid, SNAP, and Child Care Assistance" (Mar. 2016), https://www.urban.org/sites/default/files/publication/78846/2000668-Changing-Policies-to-Streamline-Access-to-Medicaid-SNAP-and-Child-Care-Assistance-Findings-from-the-Work-Support-Strategies-Evaluation.pdf; *see also* Ctr. for Budget and Policy Priorities, "Modernizing and Streamlining WIC Eligibility Determination and Enrollment Processes," 18 (Jan. 6, 2017), https://www.cbpp.org/sites/default/files/atoms/files/1-6-17fa.pdf.

officials to review an individual's attempt to simply *apply* for Medicaid or SNAP benefits.[131] This provision will discourage states from continuing with efforts to develop innovative enrollment processes, and likewise discourage individuals from using uniform or joint applications or pre-screening tools where an implicated program is listed.

## The Proposed Rule is Inconsistent with Clear Congressional Intent that Recognizes the Importance of Access to Preventive Care and Nutrition Benefits for Immigrants.

The proposed rule conflicts with Congressional actions that recognize the importance of access to preventive care and nutrition benefits for immigrants. Since the 1996 welfare reform law that overhauled immigrant eligibility for programs and the 1999 INS field guidance, Congress has passed several laws the explicitly loosened or created new eligibility for means tested programs for immigrant populations. Because immigrants and their families will be penalized for using these programs that they are lawfully allowed to use, this proposal effectively ends their eligibility. Statutory text, congressional debate and contemporary media coverage demonstrate these decisions were an intentional use of legislative power that should not be undermined by a executive agency action.

- *The 2002 Farm Bill expanded SNAP for immigrant children.* Section 4401 of the The Farm Security and Rural Investment Act of 2002 restored access to what was then called Food Stamps (now the Supplemental Nutrition Assistance Program, SNAP) to immigrant children, immigrants receiving disability benefits and any qualified alien living in the U.S. for more than five years.
- *The 2009 Children's Health Insurance Program Reauthorization bill expanded access to Medicaid and CHIP for immigrant women and children.* Section 214 of the 2009 Children's Health Insurance Program Reauthorization Act (CHIPRA) gave states a new state plan amendment option to cover, with regular federal matching dollars, lawfully residing children and pregnant women on Medicaid and CHIP during their first five years in the U.S.

Families should be able to access and use the benefits they are eligible for, focused on remaining healthy and productive, without compromising their immigration status at the same time. Congress has clearly understood this over time, intentionally avoiding and removing barriers to immigrant access to programs like SNAP, CHIP and Medicaid. The administration must defer to Congressional intent on this issue.

## Conclusion

For these reasons [and those detailed in the comments that follow/precede], the Department should immediately withdraw its current proposal, and dedicate its efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants to support themselves and their families in the future. If we want our communities to thrive, everyone in those communities must be able to stay together and get the care, services and support they need to remain healthy and productive.

[131] Dep't of Homeland Security, *Proposed Rule: Inadmissibility on Public Charge Grounds*, 83 Fed. Reg. 51,114, 51,291 (Oct. 10, 2018) (to be codified in 8 C.F.R. § 212.22(b)(4)(i)(F)(i)).

**PROTECTING IMMIGRANT FAMILIES-ILLINOIS (PIF-IL):**
**Template Comment for Healthcare and Public Health**

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact [FILL IN] to provide further information.

Name

Title

[Insert contact information and add signature line if desired.]