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Submitted via www.regulations.gov

Ms. Samantha Deshommes, Chief
Regulatory Coordination Division, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
U.S. 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 Ms. Deshommes,

The March of Dimes, a unique collaboration of scientists, clinicians, parents, members of the business community, and other volunteers representing every state, the District of Columbia and Puerto Rico, appreciates this opportunity to comment on the proposed rule on inadmissibility on public charge grounds, as published in the Federal Register on October 10, 2018.

As an organization dedicated to promoting healthy mothers and strong babies, the March of Dimes is deeply concerned about the implications of the proposed rule for numerous aspects of maternal and child health. The proposed rule would allow government officials to consider the use of an applicant's broad range of services such as Medicaid, the Supplemental Nutrition Assistance Program (SNAP), and housing assistance when determining eligibility for green cards and/or lawful admission to the U.S. The proposed rule would cause major harm to the health and wellbeing of children in immigrant families without any justification. **As such, we strongly oppose the proposed rule and urge the Department to withdraw it in its entirety.**

The Proposed Rule Would Have a Widespread "Chilling Effect" on Public Assistance Programs

While only the use of benefits by an individual would be considered under the proposed rule – and not their dependents – there is simply no way to implement this rule without direct harm to children, including U.S. citizen children. We are concerned that the proposed rule would have a widespread "chilling effect" on participation in public assistance programs that low-income women, children and families depend upon to stay healthy and maintain their quality of life. Public assistance programs like Medicaid, SNAP, and housing assistance have not historically been considered in immigration determinations, including public charge reviews. This is for good reason as these programs ensure that families have access to medical care, adequate nutrition, and safe and affordable housing. The March of Dimes believes that seeking a basic standard of living for your family should not be a condition of remaining in the country.

The Department asserts that "the proposed rule may decrease disposable income and increase poverty of certain families and children, including U.S. citizen children."¹ It also notes that "an expansion of the

¹ Department of Homeland Security, Proposed Rule: Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114, 51,277 (Oct. 10, 2018) ("NPRM").

current public charge standard would result in “[disenrollment or foregoing enrollment in public benefit programs by aliens otherwise eligible for these programs.”² We believe that such a negative policy outcome far outweighs any purported benefit of the proposed rule, as millions of U.S. citizen children stand to lose access to medical care.

The public charge test, as outlined in the proposed rule, would disincentive participation in any of the implicated programs. Furthermore, merely applying for any of the programs is enough to be considered by immigration official³, and receipt of any benefit would be considered “a heavily weighted factor.”⁴ These provisions will result in non-citizens withdrawing from both listed and non-listed public assistance programs – both on behalf of themselves and their dependent children – out of fear that there would be negative consequences to their immigration status. Children would bear a particular brunt of the proposed rule’s adverse effects because of their families’ foregoing access to public assistance for which they would be otherwise eligible.

The Proposed Rule Ignores the Importance of Medicaid, CHIP, and SNAP to Women and Children’s Health Outcomes

Mothers and children rely heavily on programs the Department would include in the public charge review. Medicaid successfully provides health coverage to 74 million of our nation’s most vulnerable people.⁵ Of that number, approximately 37 million are children, making Medicaid the nation’s largest insurer of children.⁶ Over eight million U.S. citizen children with an immigrant parent have Medicaid or CHIP coverage.⁷ Likewise, over 2.5 million children with an immigrant parent rely on SNAP benefits to maintain their nutritional health.⁸

There have been historic gains in health coverage over the last three years resulting in the lowest uninsured rates on record for children and their parents, and these rates must be preserved. As compared to children without health insurance, children enrolled in Medicaid in their early years have better health, educational, and employment outcomes not only in childhood but later as adults.

These children stand to lose health care coverage and nutrition benefits as a result of confusion or fear from the new immigration restrictions. We are particularly concerned about how the proposed rule would lead to massive disenrollment from Medicaid and CHIP, which would put millions of children and their parents at risk of being uninsured, causing them to lose access to critical health care services. The proposed rule would create undue barriers to accessing health care and nutrition assistance for

² NPRM at 51,270.

³ NPRM at 51,291 (to be codified in 8 C.F.R. § 212.22(b)(4)(i)(F)(i)).

⁴ NPRM at 51,292 (to be codified in 8 C.F.R. § 212.22(c)(1)(ii), (iii)).

⁵ U.S. Centers for Medicare and Medicaid, “Medicaid & CHIP Enrollment Data Highlights,” Medicaid.gov, April 2018, accessed July 25, 2018, <https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights/>

⁶ Medicaid and CHIP Payment and Access Commission, “Child Enrollment in CHIP and Medicaid by State, FY2016,” Macpac.gov, accessed July 25, 2018, <https://www.macpac.gov/wp-content/uploads/2015/01/EXHIBIT-32.-Child-Enrollment-in-CHIP-and-Medicaid-by-State-FY-2016.pdf>

⁷ Kaiser Family Foundation, “Nearly 20 Million Children Live in Immigrant Families that Could Be Affected by Evolving Immigration Policies” (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/>.

⁸ National Center for Children in Poverty, “SNAP Take-up Among Immigrant Families with Children,” 7 (Mar. 2011), http://www.nccp.org/publications/pdf/text_1002.pdf.

pregnant women. Medicaid improves access to care and overall health and reduces mortality rates.⁹ If pregnant women decline to enroll in Medicaid and lose access to pregnancy-related health services, there would likely be serious health implications for mothers and their children affecting their birth and early health outcomes. This especially of concern since premature birth and its complications are the largest contributor to death in the first year of life in the United States, and the premature birth rate continues to rise.¹⁰

Similarly, fear of enrolling children in Medicaid or CHIP would result in fewer regular doctor visits. The first months and years of a child's life are marked by rapid growth and brain development and are especially important for consistent health care.¹¹ Nutrition assistance is also vital during the prenatal development and in early childhood. Research over decades has demonstrated that nutrition assistance directly targeted at young children and pregnant women is effective in improving child health.

The Proposed Rules would lead to Medicaid and CHIP Disenrollment Leaving Low-Income Women, Children and Families without Critical Health Coverage and Services

Today, Medicaid covers roughly half of all births in the United States, including many high-risk pregnancies.¹² Pregnancy and child birth incur significant medical costs, and low-income families heavily rely on Medicaid to provide coverage for these expenses. If Medicaid is included in public charge determinations, it is expected that there would be a significant chilling effect on program enrollments.

According to estimates by the Kaiser Family Foundation, if the proposed rule leads to Medicaid disenrollment rates ranging from 15% to 35% among Medicaid and CHIP enrollees living in a household with a noncitizen, between 2.1 to 4.9 million Medicaid/CHIP enrollees would disenroll from the programs.¹³

Another analysis from the California Health Care Foundation estimates that 4.8 million children in need of medical attention live in households with at least one noncitizen adult and are insured by Medicaid or CHIP. The authors estimate that 700,000 to 1.7 million of these children are likely to be disenrolled from Medicaid or CHIP.¹⁴ This includes approximately:

- 143,000 to 333,000 children with at least one potentially life-threatening condition, including asthma, influenza, diabetes, epilepsy, or cancer

⁹ Chintan B. Bhatt and Consuelo M. Beck-Sagué, "Medicaid Expansion and Infant Mortality in the United States," *Am J Public Health*. 2018 April; 108(4): 565–567. Published online 2018 April. doi: [10.2105/AJPH.2017.304218]

¹⁰ March of Dimes Premature Birth Report Card 2018, <https://www.marchofdimes.org/news/health-of-babies-in-the-u-s-continues-to-worsen-march-of-dimes-report-card-shows.aspx>

¹¹ Elisabeth Wright Burak, *Promoting Young Children's Healthy Development in Medicaid and the Children's Health Insurance Program (CHIP)*, Georgetown Center for Children and Families, 2018, <https://ccf.georgetown.edu/wp-content/uploads/2018/10/Promoting-Healthy-Development-v5-1.pdf>.

¹² March of Dimes, *Maternity and Newborn Care in Medicaid Factsheet*, February 2017. https://www.marchofdimes.org/materials/March-of-Dimes-Maternity-and-Newborn-Care-in-Medicaid_Feb2017.pdf

¹³ Kaiser Family Foundation, "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid," October 11, 2018, <https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-the-proposed-public-charge-rule-on-immigrants-and-medicaid/>

¹⁴ California Health Care Foundation, "Changing Public Charge Immigration Rules: The Potential Impact on Children Who Need Care," October 23, 2018, <https://www.chcf.org/publication/changing-public-charge-immigration-rules/>

- 122,000 to 285,000 children on prescribed medications
- 102,000 to 238,000 newborns
- 53,000 to 124,000 children with musculoskeletal and rheumatologic conditions like fractures and joint disorders

Medicaid is used by states as an essential coverage option for babies born with complications like prematurity, low birthweight, and birth defects. Without Medicaid coverage, these families would likely lack access to any health insurance option, which would leave them with particularly high maternity care and delivery costs. The average cost per maturity stay for an uncomplicated birth ranges from \$1,189 to \$11,986 with a median cost of \$4,215.¹⁵ Complicated births can be significantly more expensive – even as much as ten times that of an uncomplicated birth.¹⁶ These costs would have to be assumed by the mother if there is no insurance, diminishing the financial resources that can support a newborn at its most vulnerable time.

Medicaid protects new parents against this significant financial liability, limiting their exposure to catastrophic health care costs, reducing out-of-pocket expenditures, and ensuring that new mothers have the economic security to focus on the needs of their newborns.¹⁷ The security of Medicaid coverage permits millions of American families to use their limited financial resources to meet other basic needs, such as food and housing.¹⁸ This allows families to access vital health care services – especially during the prenatal and perinatal periods – without having to forego other household essentials.¹⁹

In addition, Medicaid provides a range of other prenatal and postpartum services. Most states cover access to prenatal vitamins, ultrasounds, amniocentesis, chorionic villus sampling (CVS) tests, genetic counseling, breast pumps, and postpartum home visiting.²⁰ This coverage plays a critical role in guiding a safe pregnancy, identifying preventable risks, and promoting healthy practices like breastfeeding. Without Medicaid coverage, these services would be out of reach for many families, resulting in poorer pregnancy and birth outcomes.

For these reasons, both the federal government and states have actively supported Medicaid access for pregnant women and young children – including immigrants. Medicaid permits states the option to set income eligibility thresholds for pregnant women and young children that are higher than non-pregnant

¹⁵ Xiao Xu, et al., “Wide Variation Found in Hospital Facility Costs For Maternity Stays Involving Low-Risk Childbirth,” 34 *Health Affairs* 1212 (2015).

¹⁶ *Ibid.*

¹⁷ Kaiser Family Found., “Health Care Spending Among Low-Income Households with and without Medicaid” (Feb. 2016), <https://www.kff.org/medicaid/issue-brief/health-care-spending-among-low-income-households-with-and-without-medicaid/>; Katherine Baicker, et al., “The Oregon Experiment – Effects of Medicaid on Clinical Outcomes,” 368 *N. Engl. J. Med.* 1713 (May 2013).

¹⁸ *Ibid.*

¹⁹ Luojia Hu, et al., “The Effect of the Patient Protection and Affordable Care Act Medicaid Expansions on Financial Wellbeing,” NBER Working Paper No. 22170 (Apr. 2016).

²⁰ Kaiser Family Found., “Medicaid Coverage of Pregnancy and Perinatal Benefits: Results from a State Survey” (Apr. 2017), <https://www.kff.org/womens-health-policy/report/medicaid-coverage-of-pregnancy-and-perinatal-benefits-results-from-a-state-survey/>.

adults. Nearly every state has exercised this option, with several states adopting income limits over two times higher than the highest limit allowed for non-pregnant adults.²¹

For over twenty years, most legal immigrants were subject to the five-year bar on accessing Medicaid coverage under the 1996 reforms.²² This was reversed in the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA), which permitted states to extend medical coverage to children and pregnant women who are lawfully present and would otherwise be eligible for Medicaid or CHIP.²³ Since the option became available in 2009, thirty-three states have elected to exercise this option with respect to immigrant women who are pregnant.²⁴

The higher income thresholds for Medicaid and CHIPRA’s state option represents a clear intent by Congress to ensure that immigrant women who are pregnant have access to the medical services that they need to ensure a healthy pregnancy and positive birth outcomes. The reasons are clear: preventative health treatment in the prenatal, perinatal, and postpartum periods leads to positive health outcomes throughout life – a strategic investment in both the health and future of the child.²⁵

Due to Medicaid’s vital role in ensuring positive birth outcomes and healthy children, we strongly urge that the Department withdraw its proposed inclusion of Medicaid within public charge determinations.

Medicaid and SNAP’s Inclusion in Public Charge Review would Negatively Impact WIC

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) works in tandem with Medicaid and SNAP to advance its public health mission. Congress recognized the beneficial relationship between the programs, as WIC’s targeted intervention for pregnant women, new moms, and young children complements the broader purpose of Medicaid to provide health coverage and SNAP to ensure adequate nutrition for low-income families. As a result, Congress enacted provisions that reduce administrative barriers and promote cross-participation between WIC and other programs. Medicaid and SNAP’s inclusion in public charge review will therefore have a detrimental effect on both WIC’s administration and participation, even though it is not included in the listed programs under the proposed rule.

CHIP Should Be Explicitly Excluded from the Proposed Rule, if the Rule Moves Forward

The Department has requested comment on whether CHIP should be included in public charge review. We believe the proposal to expand the public programs to be considered in a public charge test is deeply misguided. It is our view that **no additional programs should be considered in the public charge determination** as that would only increase harm to women, children and families. For the same reasons

²¹U.S. Centers for Medicare and Medicaid, “Medicaid, CHIP, and BHP Eligibility Levels,” (Apr. 2018), <https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-eligibility-levels/index.html>.

²² See 8 U.S.C. § 1613.

²³ Pub. L. No. 111-3 § 214 (2009).

²⁴ National Immigration Law Center, “Health Care Coverage Maps,” <https://www.nilc.org/issues/health-care/healthcoveragemaps/> (last updated Aug. 13, 2018).

²⁵ See Michel Boudreaux, et al., “The long-term impacts of Medicaid exposure in early childhood: Evidence from the program’s origin,” 45 J. of Health Economics 161 (2016); Georgetown Univ. Health Policy Inst., “Medicaid Provides Needed Access to Care for Children and Families,” <https://ccf.georgetown.edu/wp-content/uploads/2017/03/Medicaid-provides-needed-access-to-care.pdf> (Mar. 29, 2017).

we oppose the inclusion of Medicaid, we adamantly oppose the inclusion of CHIP, which would worsen the problems with the proposed rule by extending it further. In addition to millions of children, CHIP serves about 370,000 pregnant women each year.²⁶ Some states that have exercised the CHIPRA option to serve immigrant women who are pregnant have organized those medical services under CHIP. It is our strong view that the inclusion of CHIP in public charge review would greatly exacerbate the negative public health effects of the proposed rule; therefore we urge that CHIP be excluded from public charge determinations.

Conclusion

The proposed rule puts forth daunting disincentives that will leave millions women, children and families without access to programs that address their basic health care needs. Other programs may not be explicitly included in the proposed rule, but the overriding fear within immigrant communities will functionally nullify that distinction. **For all the above reasons, we urge the Department to withdraw this ill-advised and harmful rule in its entirety.**

Once again, the March of Dimes appreciates the opportunity to comment. If we can provide any further information or otherwise be of assistance, please contact our Director, Federal Affairs KJ Hertz at khertz@marchofdimes.org or 202/659-1800.

Sincerely,

Dr. Rahul Gupta, MD, MPH, MBA, FACP
Chief Medical and Health Officer

²⁶ March of Dimes, "CHIP Coverage for Pregnant Women," <https://www.marchofdimes.org/materials/chip-coverage-for-pregnant-women-may-2014.pdf> (accessed Oct. 1, 2018).