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The Honorable Kirstjen Nielsen  
Department of Homeland Security  
20 Massachusetts NW  
Washington, DC 20529–2140

**RE: DHS Docket No. USCIS–2010–0012 – Comments in Response to Proposed  
Rulemaking: Inadmissibility on Public Charge Grounds**

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Dear Secretary Nielsen,

On behalf of the American Psychiatric Association (APA), the national medical specialty society representing more than 37,800 psychiatric physicians nationwide, we are writing in response to the Department of Homeland Security’s (DHS) proposed rule, *Inadmissibility on Public Charge Grounds*, as published in the Federal Register on October 10, 2018. We appreciate the opportunity to provide feedback on this important proposal and write with concern about the proposed change to “public charge” policies. We focus our comments on the negative impacts this policy change would have on children and their families’ mental health.

The proposed rule would change the way the government considers public charge determinations by including previously excluded health, nutrition, and housing programs, such as Medicaid, subsidies for prescription drug costs under Medicare Part D, Section 8 Housing Vouchers and Public Housing, and the Supplemental Nutrition Assistance Program (SNAP).<sup>1</sup> The proposal also recommends considering family income as a factor in determining whether an immigrant is a public charge. Historically, a public charge determination is made when a person applies for a visa to enter the United States or to adjust to legal permanent resident (LPR) status (i.e., obtain a “green card”). This test is meant to identify a public charge and can be used to deny a visa or a green card.

If implemented, this proposed rule would put immigrant families in a situation where they would have to make the choice between accessing services and risk being denied LPR status later or forgoing vital services to keep their families together. All immigrants, refugees and displaced persons must be treated with dignity and respect during all stages

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<sup>1</sup> Notice of Proposed Rulemaking, “Inadmissibility on Public Charge Grounds,” Federal Register, Vol. 83, No. 196. October 10, 2018, pgs. 51114-51296, <https://www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf>.

of the migratory process and for those who have unmet mental health needs, we must intervene and provide services when appropriate.<sup>2</sup> **The proposal is troubling, given that we know many families crossing the US border are fleeing war and violence in their home countries and are already coping with the effects of stress and trauma. We are concerned that this proposal will cause incalculable harm and hardship to both children and adults.**

### *Understanding the Mental Health Needs of Immigrant Populations*

As written, this proposal largely ignores the circumstances under which immigrants are arriving to the US border. A recent study found that among Central American migrants arriving at the border, 83% reported violence as the primary reason for fleeing their country.<sup>3</sup> The exposure to violence included extortion, death threats, and domestic violence. Reports of serious violence are also common, with nearly one third of study participants (32.2%) reporting that a family member had been murdered. **While people who are displaced can demonstrate high levels of resiliency, they can also experience disabling post-traumatic stress disorder or other consequences that adversely impact their medical, psychological, social, and spiritual well-being.** These consequences can range from demoralization to various sequelae, involving simple and complex trauma complicated by the migratory journey and resettlement process. These migration-related and postmigration stressors can produce demoralization, grief, loneliness, loss of dignity, and feelings of helplessness as syndromes of distress that impede refugees from living healthy and productive lives.<sup>45</sup>

In addition to the circumstances an immigrant may be fleeing, we cannot underestimate the traumatic experience of being detained. Earlier this year, Drs. Scott Allen and Pamela McPherson, who respectively serve as the medical and psychiatric subject matter experts for the DHS, wrote a letter to the Congressional Whistleblower Caucus highlighting the agency's harmful practices in detention centers and their impact on the health of families. They noted an overwhelming amount of unmet medical needs, a lack of adequate health staff (including pediatricians, child and adolescent psychiatrists, and pediatric nurses), and alarming overcrowding conditions in family residential centers.<sup>6</sup>

More recently, the HHS Office of Inspector General (OIG) released a worrisome report on November 27, 2018 from his recent site visit to a facility in Tornillo, Texas. The OIG found that the facility was not conducting required Federal Bureau of Investigation fingerprint background checks for its staff and was

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<sup>2</sup> American Psychiatric Association. Position Statement on the Role of Psychiatrists in Addressing Care for People Affected by Forced Displacement (2017). <https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2017-People-Affected-by-Forced-Displacement.pdf>

<sup>3</sup> Keller A, Joscelyne A, Granski M, Rosenfeld B. "Pre-Migration Trauma Exposure and Mental Health Functioning among Central American Migrants Arriving at the US Border." PloS ONE. 2017;12(1): e0168692.

<sup>4</sup> Al-Krenawi, A., Lev-Wiesel, R., & Sehwal, M. (2007). Psychological symptomatology among Palestinian children living with political violence. *Child and Adolescent Mental Health* 12:27–31.

<sup>5</sup> Fernando, G.A., Miller, K.E., & Berger, D.E. (2010). Growing pains: the impact of disaster-related and daily stressors on the psychological and psychosocial functioning of youth in Sri Lanka. *Child Development* 81:1192-1210.

<sup>6</sup> Dr. Scott Allen and Dr. Pamela McPherson, Letter to the Senate Whistleblowing Caucus, July 17, 2018, <https://www.whistleblower.org/sites/default/files/Original%20Docs%20Letter.pdf>.

instead using checks conducted by a private contractor that only has access to less comprehensive data.<sup>7</sup> The report also echoed Drs. Allen and McPherson's concerns that these facilities do not employ a sufficient number of clinicians to provide adequate mental health care to detainees. **It is clear that these patients have an overwhelming need for both physical and behavioral healthcare and it is unreasonable to intentionally restrict access to such care for immigrants fleeing violence in their home countries and experiencing traumatic conditions in detainment.**

#### *Concerns Regarding the Proposed Rule's Implementation*

The proposed rule would not only expand the public charge definition, it also would establish a new income standard of 125% of the federal poverty level (\$25,975 for a family of three). Based on data from the 2014 Survey of Income and Program Participation, nearly all (94%) noncitizens who originally entered the U.S. without LPR status have at least one characteristic that DHS could hold against him or her<sup>8</sup>, such as limited access to healthcare, employment, and education in their home countries. Beyond a potential to need public support, these factors may include having no high school diploma, having a household size of three or more, and having no private insurance. In addition, 34% of immigrants have an income below the 125% federal poverty line threshold set by the proposed rule. It is important to note that by increasing barriers to obtaining LPR status, this policy change will likely cause more family separations, since parents will not be able to legally remain in the country if they are denied LPR status. This proposal would overwhelmingly discriminate against this vulnerable patient population and will lead to worsened health outcomes.

While most immigrants are not eligible for public benefits until they have had a green card for five years, there are exceptions to this rule, such as refugees, asylees, victims of human trafficking, and Veteran and active military and their families.<sup>1</sup> If the proposal is implemented, the confusion among these eligible groups will likely lead them to avoid services out of fear. **We are concerned that this loss in coverage will lead individuals to delay care and to an increase in providers seeing uninsured patients with more severe health and mental health issues.** Studies repeatedly demonstrate that the uninsured are less likely than those with insurance to receive preventive care and services for major health conditions and chronic diseases.

The Medicaid and CHIP Payment and Access Committee (MACPAC) reported an estimated 15-35% (2.1 to 4.9 million enrollees) drop in enrollment as a consequence of this proposal.<sup>9</sup> The proposal acknowledges this chilling effect and notes that studies show a decline in enrollment from public programs following

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<sup>7</sup> Levinson, Daniel. "The Tornillo Influx Care Facility: Concerns About Staff Background Checks and Number of Clinicians on Staff." Department of Health and Human Services Office of the Inspector General. November 27, 2018.

<sup>8</sup> Artiga, Samantha et al. "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid." October 2018. <http://files.kff.org/attachment/Issue-Brief-Estimated-Impacts-of-the-Proposed-Public-Charge-Rule-on-Immigrants-and-Medicaid>

<sup>9</sup> Heberlein, Martha. *Proposed Rule: Inadmissibility on Public Grounds Charge*. Medicaid and CHIP Payment and Access Commission, 25 Oct. 2018, [www.macpac.gov/wp-content/uploads/2018/10/Proposed-Rule-Inadmissibility-on-Public-Charge-Grounds.pdf](http://www.macpac.gov/wp-content/uploads/2018/10/Proposed-Rule-Inadmissibility-on-Public-Charge-Grounds.pdf).

welfare reform changes in 1996, but does not address how to prevent this impact. The proposed rule would also have implications for state Medicaid programs. In its initial assessment of the proposal, MACPAC highlighted that it will likely impose additional administrative burdens on the state programs, who will be required to report to DHS individuals' use of public benefits and coordinate proper communication regarding this policy change with enrollees.<sup>8</sup> Additionally, states may face the policy's fiscal implications through a loss in Medicaid funds and an increase in costs for uncompensated care.

#### *The Importance of Protecting CHIP*

DHS requested comments 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 in public charge determinations.** Access to health care is crucial to healthy childhood development, which is of long-term benefit to society. 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 and its chilling effect. Due to the chilling effect of the rule, many eligible citizen children would likely forego CHIP—and health care services (such as vaccinations) altogether—if their parents think they will be subject to a public charge determination. It is also concerning that the proposed rule may penalize an adult applying for LPR status if he or she depended on CHIP as a child.

While we focus our comments on the access to health care, we acknowledge the research demonstrating that safety net programs, such as SNAP, housing supports, and Medicaid, have short and long-term health benefits and are crucial levers to reducing the intergenerational transmission of poverty.<sup>10</sup> **We respectfully request that DHS rescind this rule and not consider use of public benefits programs, like Medicaid and SNAP, and income level tests in public charge determinations.**

Thank you again for the opportunity to respond to this proposal. We welcome the opportunity to further continue this conversation and ask that you contact Kathy Orellana, Associate Director of Practice Management and Delivery Systems Policy, at [korellana@psych.org](mailto:korellana@psych.org) if you have questions.

Sincerely,



Saul Levin, MD, MPA, FRCP-E  
CEO and Medical Director

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<sup>10</sup> Trisi, Danilo. "Economic Security, Health Programs Reduce Poverty and Hardship, With Long-Term Benefits." February 9, 2018. <https://www.cbpp.org/blog/economic-security-health-programs-reduce-poverty-and-hardship-with-long-term-benefits>.