



SPAN and Family Voices NJ comments to the Department of Homeland Security on the Public Charge Ground of Inadmissibility

October 6, 2021

Thank you for the opportunity to comment on the Public Charge Ground of Inadmissibility. The SPAN Parent Advocacy Network (SPAN) is New Jersey's one-stop for families of children birth to 26 across systems; our special priorities are children and families at greatest risk due to poverty, disability and special healthcare needs, discrimination based on race, ethnicity, immigrant or language status, gender identity, or other special circumstances. Family Voices-NJ is the New Jersey affiliate for Family Voices, dedicated to supporting the family voice in children's healthcare. SPAN also serves as the Parent-to-Parent USA affiliate for NJ; the NJ Parent Training and Information Center and Family to Family Health Information Center; and the state organization of the National Federation of Families for Children's Mental Health. Our comments today are based on our extensive experience providing support to families around health care and health coverage including in particular Medicaid.

Overall Comments

SPAN and Family Voices-NJ strongly oppose the Department of Homeland Security's proposed "public charge" rule because (a) it will hurt immigrants, including immigrant with disabilities and their families; (b) it's unfair and discriminatory to people with disabilities and their families; and (c) it's bad for our country. The proposed rule is an attack on immigrants with disabilities and their families, including immigrants who have children with disabilities, among others. It is wrong to punish people for using critical public services. Medicaid is the only federal source for comprehensive community living supports for people with disabilities to work, go to school, and be part of their communities. The majority of these community services simply aren't covered under private insurance. Punishing people for using these services is the same as punishing people for having a disability.

If this rule becomes final, immigrants with disabilities – despite the diversity of skills and contributions they bring with them - could be denied entry into this country because they might require these important services. The Department of Homeland Security will look at a person's health before deciding if they are a "public charge." The rule will consider whether someone has a medical condition likely to require extensive medical treatment or institutionalization, or if a medical condition will interfere with the person's ability to take care of themselves, attend school, or work. If a person with this type of disability or medical condition can't get private health insurance to pay for all of their needs, this will count against them. This means that many people with disabilities - including people with intellectual and developmental disabilities, psychiatric disabilities, or physical disabilities who need personal care services - would be screened out as someone likely to become a "public charge." In other words, the

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proposed rule would likely exclude people with disabilities simply because they have a disability. The fear created by these rules would also extend far beyond any individual who may be subject to the "public charge" test and will cause lasting harm to entire communities. People might not apply for the services they need and to which they are legally entitled because they are afraid they will not be allowed to stay in the US. The rule may also make US citizens with disabilities feel that they are a burden because they use Medicaid.

The proposed rule is also short-sighted. Investing in nutrition, health care, services for children, youth and adults with disabilities, and other essential and basic needs keeps children, youth, and families strong and allows all of us to contribute fully to our communities. Families thrive when they have access to health care and social supports, nutritious food, housing, and other essential human services, maximizing their contributions and benefit to our society as a whole. The proposed rule puts people with disabilities, LEP and low-income families, and others, at a drastic disadvantage, based on their disability or circumstances that arise directly from it. ***The rule is unfair and discriminatory, and we strongly urge the administration to withdraw it.***

III. Request for Information

A. Purpose and Definition of Public Charge

Questions for the Public in this section refer to defining the term, evidence regarding definitions, minimizing confusion, relevant national policy, disproportionate negative impacts and using a data informed approach.

We understand the “likely at any time to become a public charge” definition. We acknowledge that the agency proposes to consider any current and past receipt of public benefits as a negative factor in the totality of the circumstances...” but ***disagree with this***.

B. Prospective Nature of the Public Charge Inadmissibility Determination

Question for the public in this section is regarding time period.

We understand that consideration if an applicant was previously found inadmissible based on public charge grounds to be a high risk of becoming a public charge in the future is part of the rule, but ***disagree*** for a variety of reasons, including that those circumstances could have been temporary.

C. Statutory Factors

Questions for the Public in this section include predictive factors, addressing unfairness, totality of circumstance tools, consideration of Affidavit of Support, and how information is requested.

Although we acknowledge this is a prediction based upon the totality of the applicant’s circumstances, life circumstances cannot be predicted. Although this is based on the totality of the applicant’s circumstances, circumstances such as giving birth to a child with a disability can’t be predicted.

We disagree that this applies to any applicant if he or she is likely at any time to become a public charge as this contradicts the previous comment regarding prediction based upon the totality of the applicant’s circumstances and future circumstances cannot be predicted.

We acknowledge this proposal to require an applicant for an extension of stay to attest that he or she has neither received, is not receiving, nor is likely to receive at any time in the future public benefits but again ***disagree*** as no one can say they will not receive “at any time in the future” public benefits.

a. Age

Question for this section is how an applicant's age should be considered.

We understand but *disagree* that a person's age may impact his or her ability to work and is relevant to the likelihood of becoming a public charge. *We do not support* that consideration of age over 61 to be a negative factor. More than half of individuals are still working after age 61.ⁱ We acknowledge that consideration includes age; health; family status; assets, resources, and financial status; and education and skills, but *disagree*. Again health cannot be predicted and many people with disabilities are employable.

b. Health

Questions here include defining health, considering disability, coordination with the Rehab. Act, and social determinants of health.

We strongly disagree with using the Report of Medical Examination and Vaccination Record, or evidence of a medical condition, as disability does not predict employability. In addition, there is a wide range of abilities even amongst individuals with the same diagnosis. There are considerations for temporary and short-term disability, and those with mental health issues often do recover. Here again we are concerned using predictions based on the totality of an applicant's circumstances at the time of adjudication. Besides inability to predict the future, there are misconceptions regarding the ability of people with disabilities to work. We acknowledge that consideration would be given to insurance, but disagree as individuals may lose insurance due to circumstances beyond their control (e.g. adults on parental insurance up to a certain age.) *We strongly disagree* with the consideration of disability and/or chronic health condition as it is inconsistent with federal statutes and regulations with respect to discrimination. Many people with disabilities can work but stereotypes and prejudice are barriers. According to the Bureau of Labor Statistics "The unemployment rate for persons with a disability was ...more than twice that of those with no disability." It is noted that "employed persons are those who did not have a job, were available for work, and were actively looking for a job in the 4 weeks preceding the survey.)"ⁱⁱ

c. Family Status

Questions here include defining family and considering household size.

Per our previous comments, we are concerned with the notion to "determine whether a sponsor meets the minimum income requirements based on the FPG."

d. Assets, Resources, and Financial Status

Questions here consider types of assets, whose assets, defining financial status, those without bank access, financial obligations, circumstances (such as geography), data used to determine finances, and economic opportunities/unintended disparate impacts.

We also disagree with predicting someone who does not have health insurance is a likely public charge. There is no way to predict a prognosis of a current illness or possible future care.

e. Education and Skills

Questions here include consideration of education, which skills, and opportunities/disparate impacts

We understand *and disagree* with consideration of education and skills sufficient to avoid becoming a

public charge. We *disagree* that the inability to speak and understand English may adversely affect whether an applicant can be employed. There are many US residents who are employed and who do not speak English.

D. Affidavit of Support Under Section 213A of the INA

Questions for the Public in this section include how to consider Affidavits and sufficiency.

Per our previous comments, we *disagree* that how close of a relationship the sponsor has to the applicant is relevant. The sponsor relationship should be confidential and in addition there are cases in which employers have offered to sponsor individuals to keep good workers.

E. Other Factors to Consider

Questions for the Public in this section include other factors, time duration, and supportive data.

We acknowledge that “[s] income, assets, and resources play a major role in whether an individual is likely to become a public charge.” However, a single illness could wipe out a family’s finances and this is not predictable.

F. Public Benefits Considered

Questions for the Public in this section include consideration of receipt of public benefits, which benefits should/should not be considered, and forgoing benefits.

While we understand that the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) restricted eligibility for many Federal, State, and local public benefits, *we did not support* the PRWORA for that reason. Further, we acknowledge that applicants are eligible for federal means-tested benefits after 5 years, and *did not support those restrictions*. Restricted benefits included medical, disaster relief, public health assistance, housing, and other services such as shelters or soup kitchens.

We note that this current proposal is no different than the 2019 version in that it considers age, health, family status, assets, and education/skills. We are particularly concerned about Medicaid/IDEA as schools may try to coerce families into applying for Medicaid due to FMAP. In addition, according to the Arc, “The public charge rule is an attack on immigrants with disabilities and their families, among others. It is wrong to punish people for using critical public services. Medicaid is the only federal source for comprehensive community living supports for people with disabilities to work, go to school, and be part of their communities.ⁱⁱⁱ” *Here again we disagree with the proposal* as TANF is time limited. . Further, an individual may become disabled and then qualify for SSI.

We understand that the 1999 Interim Field Guidance considered institutionalization for long-term care at government expense, but *oppose* this because again this can’t be predicted. We seek clarification on what happens if a previously deemed admissible applicant becomes disabled and have documented that they will not need benefits “at any time in the future.”

G. Previous Rulemaking Efforts

Questions for the Public in this section include what to include from the 1999 interim guidance, future guidance, the vacated 2019 rule, and direct/indirect effects.

In general, we disagreed with the 2019 rule as more restrictive. However, we are concerned that 20

years later we are reverting to 1999 guidance which in some areas is equally restrictive.

H. Bond and Bond Procedures

Questions for the Public in this section include standards, minimum bonds, bond factors, breached bonds, and cancelled bonds.

We have no additional comments on this section.

I. Specific Questions for State, Territorial, Local, and Tribal Benefit Granting Agencies and Nonprofit Organizations

Questions for the Public in this section include organizations costs, reduction in enrollment/disenrollment, assessing determinations, organizational concerns, impacts, patterns, and foregoing benefits.

As stated in our 2019 comments, we acknowledge and *strongly disagree* that “agencies may decide to modify enrollment processes and program documentation for designated benefits programs. For instance, agencies may choose to advise potential beneficiaries of the potential immigration consequences of receiving certain public benefits” as this is already happening^{iv}. Families are foregoing benefits due to these fears which is adversely affecting long term health consequences due to lack of food security, not accessing medical care, etc. According to the National Association for City and County Health Officials, “over 19 million or one in four (25%) children live in a family with an immigrant parent, and nearly nine in ten (86%) of these children are citizens.”^v

In general, we are concerned about the lack of flexibility in providing assistance to vulnerable populations. Thank you again for the opportunity to comment on the public charge.

Sincerely,



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To empower families and inform and involve professionals and other individuals interested in the healthy development and education of children, to enable all children to become fully participating and contributing members of our communities and society.

ⁱ <https://www.bls.gov/emp/tables/civilian-labor-force-participation-rate.htm>

ⁱⁱ <https://www.bls.gov/news.release/disabl.nr0.htm>

ⁱⁱⁱ <https://blog.thearc.org/2018/10/17/impact-public-charge-rule-change-people-disabilities/>

^{iv} <https://www.cbpp.org/press/statements/greenstein-trump-administrations-proposed-rule-will-result-in-legal-immigrants-of>

^v https://www.naccho.org/uploads/downloadable-resources/FINAL_Public-Charge-Rule-Release_10.10.18.pdf