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December 10, 2018

Samantha Deshombres
Chief, 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 on
Inadmissibility on Public Charge Grounds

Dear Ms. Deshombres:

Disability Rights California (DRC) appreciates this opportunity to share our views. We write to express strong opposition to the U.S. Department of Homeland Security's proposed rule on public charge determinations. DRC is the designated protection and advocacy agency for California, mandated to advance the civil rights of Californians with disabilities. Since 1978, DRC has provided critical advocacy services for people with disabilities and last year alone responded to advocacy requests from nearly 25,000 Californians with disabilities. Our legal work includes individual and impact litigation, direct advocacy services, outreach and training, and investigations of abuse and neglect. DRC protects and advocates for the rights of all Californians with disabilities, regardless of their ethnicity, cultural background, language or immigration status. DRC advocates on behalf of individuals who will be and already are negatively impacted by the proposed public charge rule changes.

The proposed rule would cause major harm to people with disabilities and their families and communities, as well as the community at large. We urge you to withdraw the proposed rule in its entirety.

I. The Proposed Rule Will Effectively Exclude People With Disabilities

Despite advancements in law and policy, people with disabilities continue to face stigma and barriers that exclude them from full participation in society. As the Center for Disease Control and Prevention ([CDC](#))¹ notes:

Nearly everyone faces hardships and difficulties at one time or another. But for people with disabilities, barriers can be more frequent and have greater impact. The World Health Organization (WHO) describes barriers as being more than just physical obstacles. Here is the WHO definition of barriers:

“Factors in a person’s environment that, through their absence or presence, limit functioning and create disability. These include aspects such as:

- a physical environment that is not accessible,
- lack of relevant assistive technology (assistive, adaptive, and rehabilitative devices),
- negative attitudes of people towards disability,
- ***services, systems and policies that are either nonexistent or that hinder the involvement of all people with a health condition in all areas of life.***

Federal law, including Section 504 of the Rehabilitation [Act](#),² prohibits discrimination on the basis of disability by federal agencies. Yet the proposed public charge rule will discriminate against people with disabilities. Many people with disabilities will be screened out as likely to become a “public charge” under the proposed rule. While the preamble to the proposed rule asserts that “the mere presence of a medical condition would not render an individual inadmissible” the reality, as discussed in

¹ See, <https://www.cdc.gov/ncbddd/disabilityandhealth/disability-barriers.html>, emphasis added. [“Return to Main Document”](#)

² Section 504 of the Rehabilitation Act prohibits disability-based discrimination in any program or activity of a federal executive branch agency, including DHS 29 U.S.C. § 794(a). [“Return to Main Document”](#)

detail below, is that the proposed rule would effectively exclude people with disabilities simply because they have a disability, based on the proposed factors and how they are weighed.

Current law already establishes the minimum factors DHS should consider in public charge determinations: age; health; family status; assets, resources and financial status; and education and skills. The proposed rule goes beyond the legislative framework and sets new strict standards, expands evidence DHS looks at when considering the factors, and specifies how these factors are weighed. The rule greatly enlarges the category of people who will be considered a “public charge” by considerably broadening the types of benefits included in the public charge test and dramatically lowering the threshold for being considered reliant on those benefits. The rule also significantly increases the consideration of an individual’s health and the negative impact that having a chronic health condition or disability has on being determined a public charge. These and other provisions in the proposed rule are based on an unreasonable new interpretation of what it means to be a “public charge” and will directly hurt and exclude people with disabilities. The proposed rule reflects a harmful, outdated and inaccurate prejudice that people with disabilities are not contributors to society – a perspective that Congress has explicitly rejected in multiple statutes, including the Americans with Disabilities Act.

II. Factors in the Proposed Rule That Will Particularly Harm People with Disabilities

A. Health

Under the proposed rule, DHS will consider whether a person’s health makes them more or less likely to become a public charge, including whether they have been “diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with their ability to provide for and care for themselves, to attend school, or to work.” § 212.22(b)(2).

Whether someone’s health is considered likely to make them a public charge will be decided by DHS predicting outcomes of what a person can and will do based on their diagnosis and other information submitted to DHS, such as an attestation from their treating physician regarding whether

a medical condition impacts the ability to work or go to school. Including health status targets people with disabilities and chronic health conditions and perpetuates the false assumption that a medical diagnosis is solely determinative of an individual's current abilities and future prospects.

The new standard includes any medical condition likely to require extensive medical treatment or institutionalization or that will interfere with a person's ability to provide and care for him- or herself, to attend school, or to work. This category will include most people with disabilities – including people with intellectual and developmental disabilities, psychiatric disabilities, and/or physical disabilities who need personal care services. This is so even where the cost of personal care services may be addressed by the insurance plan through the employment of the person with a disability or a responsible family member and not from public coffers. Thus, most people with disabilities will have this factor weigh against them in the public charge determination even though in some situations it should be irrelevant. The preamble states that absence of a diagnosis of such a condition would be a positive factor. Virtually no people with disabilities will be able to meet this positive factor.

Moreover, the harmful impact of this new health standard is intensified against people with disabilities when combined with a person's ability to pay for their health care costs (which is an element in the assets factor) and with the ability to pay for medical costs or have them covered under private insurance (which is a "heavily weighted negative factor") In sum, this new interpretation of the health factor, particularly when combined with the other components related to health in the proposed rule, will in effect exclude people simply because they have a disability.

Equating a disability with dependence, helplessness, inability to work, inability to attend school, inability to participate in community life and contribute to society is wrong. In fact, there are countless examples in California and throughout the nation of people with disabilities who work, study, and in many other ways contribute to society, as well as cost savings for Social Security when people with disabilities have the opportunity for

gainful [employment](#).³ Changing the public charge standard to a more onerous one that will certainly negatively impact most people with disabilities perpetuates and exacerbates the stigmatization of persons with disabilities.

B. Assets, Resources, and Financial Status

In the definition of “public benefit” in proposed § 212.21(b), which is a key part of the assets, resources and financial status factor, the proposed rule dramatically expands the programs and benefits that will be considered in deciding who is a public charge. Many of the programs and benefits included in the new rule are ones that people with disabilities and their families often use, including Medicaid-funded community services. In California, the essential benefits which would be included provide food, healthcare, and housing to persons with disabilities who may later apply for lawful permanent status. The proposed rule uses a much lower standard than the current rule’s “primarily dependent” on benefits standard. In addition, the complicated and confusing application of the multi-faceted formula in the public benefit definition will encourage more individuals and families to opt out of benefits they need and are eligible for out of fear.

In fact, according to the California Health Report, “[e]ven though the rule changes would affect a relatively narrow group of people, experts predict hundreds of thousands more Californians could drop out of government programs because of confusion and fear. This so-called chilling effect would disproportionately affect children and Latinos, increasing poverty, hunger and poor health in communities across the [state](#)...”⁴ Moreover, as the Association of Regional Center Agencies, the organization of Regional

³ <https://www.usatoday.com/story/money/2018/03/05/willing-and-able-disabled-workers-prove-their-value-tight-labor-market/375774002/>. [“Return to Main Document”](#)

⁴ Claudia Boyd-Barrett, “Researchers Warn that “Public Charge” Rule Changes Would Lead to Hardship, Economic losses in California (Nov. 8 2018). California Health Report at <https://www.calhealthreport.org/2018/11/08/researchers-warn-public-charge-rule-changes-lead-hardship-economic-losses-california/>. [“Return to Main Document”](#)

Centers charged with serving more than 300,000 Californians with intellectual/developmental disabilities, states in its letter opposing the proposed changes to public charge determinations, “[t]his proposal is likely to reduce access to, and utilization of, developmental disability services regardless of the individual’s immigration or citizenship status. While this proposal technically applies to (primarily) non-citizens seeking permanent resident status, it will have a significant adverse impact on individuals and families who are entitled to services without an immigration [penalty](#).”⁵ At DRC, we have already received a number of calls from families who are declining to apply for Medicaid benefits even for their citizen children, families afraid to apply for low-income housing, and individuals contemplating discontinuing needed benefits for which they are eligible.

1. Medicaid Is Not a Subsistence Benefit

We strongly oppose the proposed rule’s classification of Medicaid as a public benefit subject to scrutiny under public charge determinations. To penalize the receipt of Medicaid services that help those lawfully eligible for such services achieve and maintain robust health and self-care is wholly incongruent with the purpose of Medicaid. People with disabilities will be particularly impacted by the broad inclusion of Medicaid-funded services as part of the public charge consideration. Including Medicaid as a benefit considered in the public charge determination will effectively cause immigrants with disabilities to forgo necessary and sometimes life preserving services. Of significant worry is that families with immigrant parents of citizen children will give up critically needed Medicaid services for their disabled children out of fear or confusion about the impact of the proposed rule. Going without needed health care will be devastating to immigrants who are eligible for these services, their families, and public health generally.

⁵ Comments by Association of Regional Center Agencies, November 2, 2018, Amy Westling, Executive Director. *See also, Samantha Artiga et al.*, “Estimated Impacts of the Proposed Public Charge Rule On Immigrants and Medicaid” (2018), Henry J. Kaiser Family Foundation. [“Return to Main Document”](#)

In addition, Medicaid, called Medi-Cal in California, is the largest insurer for long-term services and supports, mental health care and substance use disorder treatment in California, filling the gaps left by other insurance plans that are not required to cover many of these services. Most home and community based services are not available through private insurance or Medicare, and few people have the resources to pay for these costs out of pocket. The proposed rule would consider Medicaid-funded community services in the public charge determination, an expansion from the current public charge rule which only considers Medicaid-funded institutional long-term care.

For many people with disabilities in California, Medi-Cal is the only source for critical community living supports like personal care services, in-home nursing services, respite, intensive mental health services and employment supports. Many people with disabilities rely on Medi-Cal to live, work, attend school and participate in their communities. Since these services are used exclusively by people with disabilities, such individuals will receive disproportionately negative treatment in public charge determinations.

For example, the In-Home Supportive Services (IHSS) program is a Medi-Cal benefit which provides cost-effective attendant care to 550,000 people with disabilities, including children and seniors, allowing people with disabilities to remain safely at home and participate in the community. IHSS prevents family separation by enabling people to remain at home with personal care assistance rather than being forced into a nursing home or other out-of-home placement to get the care they [need](#).⁶ IHSS also encourages people with disabilities to seek and obtain employment because it provides certain services in the workplace. Including Medicaid as part of the public charge consideration takes away opportunities for persons with disabilities to live in the community, remain with their families, and work. DRC has received calls from families who are afraid to apply for IHSS for their children, even though their children are eligible and receipt of IHSS could prevent their costly out-of-home placement.

⁶ <https://data.chhs.ca.gov/dataset/health-human-services-program-dashboard>. [“Return to Main Document”](#)

Medi-Cal mental health services provide more than 600,000 children and adults with disabilities critical services including targeted case management, mental health treatment services, and rehabilitation through the Medicaid Specialty Mental Health Services [Waiver](#).⁷ Likewise, California’s innovative, federally-approved pilot to expand Medicaid funding for substance abuse treatment such as residential treatment, case management, and recovery support services, has created a “measurable, and in some cases profound, effect” on the number of people who are able to access critically needed substance abuse [treatment](#).⁸ Overall, California’s Medicaid Home and Community-Based Services Waivers enable thousands of people with significant disabilities, who otherwise would require placement in institutional settings, to receive in-home nursing care, case management, attendant care, residential care, and special services for people with HIV/[AIDS](#).⁹

Regional Centers in California provide community-based services and supports to over 320,000 Californians with intellectual and developmental disabilities. In the 2017-2018 budget year, federal funding from Medicaid accounted for over 30% of all Regional Center funding used for community-based services for people with intellectual and developmental disabilities, including through the Developmental Disabilities Waiver, 1915i State Plan Amendment, and Targeted Case [Management](#).¹⁰ Medi-Cal helps to pay for a wide range of services that regional center consumers rely on to live, work, and play in their communities and to stay out of institutional settings.

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[https://www.dhcs.ca.gov/services/MH/Documents/2018 SMHS Dash Combined Report non-ADA 7-18.pdf](https://www.dhcs.ca.gov/services/MH/Documents/2018_SMHS_Dash_Combined_Report_non-ADA_7-18.pdf) at 6, 21. [“Return to Main Document”](#)

⁸ <http://www.uclaisap.org/ca-policy/assets/documents/2017-2018%20UCLA%20DMC-ODS%20Evaluation%20Report%2011192018.pdf> at 19. [“Return to Main Document”](#)

⁹ <https://www.dhcs.ca.gov/services/Pages/Medi-CalWaivers.aspx>. [“Return to Main Document”](#)

¹⁰ https://www.dds.ca.gov/Budget/Docs/2018_2019_RC-DCMayEstimate.pdf at B-1, B-5. [“Return to Main Document”](#)

Services that Medi-Cal helps to pay for include: respite for family caregivers, behavioral supports, supported employment including services to assist with transition to competitive employment, housing, vehicle modifications, transportation, supported living services and assistive technology. Regional Center services are an entitlement to eligible individuals under state law and Medicaid funding is critical to the continuation of the state's commitment to robust services for its residents with intellectual and developmental disabilities. Inclusion of Medicaid funded Regional Center services in the public charge determination would have a significant impact on the services and supports Regional Centers could provide and a devastating impact on immigrant clients and their families.

2. Other Benefits, as a Part of the Assets, Resources, and Financial Status Factor

People with disabilities will also be disproportionately impacted by the inclusion of other programs, including housing and food assistance, in the public charge test. Accessible, affordable housing is critical to helping many people with disabilities live in the community. Having a disability can raise expenses and make it harder for people with disabilities and their caregivers to work, which can strain other necessary items like having enough food. Moreover, almost one in three Medicare beneficiaries enrolled in Part D prescription drug coverage get "Extra Help" with their premiums and copays through the low-income subsidy. This benefit is only available to immigrant seniors who have worked for many years in the U.S. and earned coverage under Medicare. Overall, these widespread programs help keep people housed, fed and receiving needed health care – programs that serve as investments in social and individual well-being and future productivity. Immigrants and their families should not be punished for using, or even applying for, a relatively small amount of support from these benefits.

Casting a wider net to include food and housing programs in the public charge determination directly and adversely affects people with disabilities who because of their limited income and other circumstances, count on these programs to help house and feed them. The negative effect trickles to members of the household who may, due to circumstances, have to quit work, reduce the hours they work, or look for work and forgo caring for their

disabled family member because they need to help support the household. The latter puts the person with the disability at risk of needing acute care services and possibly institutional care if s/he cannot get proper care at home. These scenarios would be at a much greater cost than care at home.

The “assets, resources, and financial status” factor also specifically looks at whether a person’s family can cover any likely medical costs of a person with a disability or health condition. § 212.22(b)(4)(B). In addition, it separately looks at whether a person with a disability or health condition has private health insurance or resources that would cover all medical costs related to the health condition or disability. § 212.22(b)(4)(I). Because private insurance does not cover many disability services and people on Medicaid must limit their financial resources to remain eligible, this factor would disproportionately count against many people with disabilities.

Overall, people with disabilities in the U.S. live in poverty at a rate twice as high as people without [disabilities](#).¹¹ Approximately 25% of Californians aged 21-64 with a disability live in [poverty](#).¹² For this reason, the gross income element of this factor is likely to have a disproportionately negative impact on people with disabilities and their families. People with disabilities in the U.S. are also more “asset poor,” in part due to economic disparities related to the higher costs associated with living with a disability, including costs for assistive technology, and the need for and expense of accessible

¹¹ Poverty among people with disabilities was at 20.9% in 2016, compared with 13.1% for people without disabilities that same year. The poverty percentage gap, or the difference between the percentages of those with and without disabilities, has been between 7.4 and 8.3 percentage points over the 8 years from 2009 to 2016. L. Kraus et al., “2017 Disability Statistics Annual Report,” 2 (2018) at [https://disabilitycompendium.org/sites/default/files/user-uploads/2017 AnnualReport 2017 FINAL.pdf](https://disabilitycompendium.org/sites/default/files/user-uploads/2017%20AnnualReport%202017%20FINAL.pdf). [“Return to Main Document”](#)

¹² <http://www.disabilitystatistics.org/reports/acs.cfm?statistic=7>. [“Return to Main Document”](#).

housing and [transportation](#).¹³ The proposed rule would use a legacy of social and economic disadvantage as the basis for further discrimination and exclusion.

C. Education and Skills

Education and employment are areas where many people with disabilities often face significant disadvantages based on their disability. The rule acknowledges that working people with disabilities contribute significantly to the U.S. economy. This is an important reality. However, unemployment rates for people with disabilities in this country are still drastically higher than those for people without [disabilities](#),¹⁴ and the disparity is even more dramatic [internationally](#).¹⁵ Similarly, many people with disabilities around the world have been denied access to equal educational opportunities, putting them at a disadvantage with respect to this factor. In the U.S., disparities in education and educational barriers for people with a disability have been ongoing for generations, resulting in lower rates of high school [completion](#).¹⁶ Great disparities also exist when

¹³ Katherine McDonald et al., "Poverty Among Adults with Disabilities: Barriers to Promoting Asset Accumulation in Individual Development Accounts" (2010). Public Health, Food Studies, and Nutrition. at <https://surface.syr.edu/nsd/>. ["Return to Main Document"](#)

¹⁴ See, e.g., U.S. Dep't of Labor's Bureau of Labor Statistics, "Persons with a Disability: Labor Force Characteristics -2017," at: <https://www.bls.gov/news.release/pdf/disabl.pdf>. ["Return to Main Document"](#)

¹⁵ World Health Organization & The World Bank, "World Report on Disability" 235 - 237 (2011) at http://www.who.int/disabilities/world_report/2011/report.pdf. ["Return to Main Document"](#)

¹⁶ American Psychological Association, "Disability & Socioeconomic Status," at <https://www.apa.org/pi/ses/resources/publications/disability.aspx>. ["Return to Main Document"](#)

comparing the attainment of higher [degrees](#).¹⁷ In addition, some people with disabilities need supports to be able to work or attend school that are typically only available under Medicaid, which would be counted against them under the “assets, resources and financial status” factor discussed above. Thus, many people with disabilities will also be negatively impacted by the “education and skills” factor.

The proposed rule fails to factor in both the small business/entrepreneurial focus of many immigrant communities and their flexibility and ability to incorporate workers with disability limitations from their immigrant communities into those workplaces. Data establishes that immigrants and the first generation are disproportionately represented in small businesses. Further, data shows that many of the immigrant and first generation small businesses employ family members and members of their communities including those with disability limitations. The proposed regulations fail to factor in such community support systems.

The proposed rule also fails to take into account that in California, Medi-Cal provides physical and mental health care, and oral care through its Denti-Cal program to persons with disabilities that enable them to remain healthy and consider employment or remain employed. It also provides durable medical equipment, prosthetics, and other necessary equipment that supports people with disabilities to attend school and work.

The evidence considered in the education and skills factor also includes a person’s proficiency in English. This factor adversely affects immigrants of color, and may adversely affect the deaf community and people with hearing or speech disabilities, people who primarily communicate through assistive devices, people with less access to formal education, people with cognitive disabilities, people with developmental disabilities, and others.

¹⁷ According to the 2015 Census, about 15.1 percent of the population age 25 and over with a disability have obtained a bachelor’s degree or higher, while 33 percent of individuals in the same age category with no disability have attained the same educational status (U.S. Census Bureau, 2015).

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III. The Proposed Rule is Bad for Public Health

The proposed rule also discourages the use of important public programs and benefits. Families may decide not to use critical public services they are eligible for out of fear of harming their immigration status. The proposed rule even identifies a number of possible bad outcomes. People may be less able to take their medications as prescribed. They will put off medical care, resulting in more emergency room visits, and increased disease in the U.S. This also leads to more uncompensated care, which strains the health care system. Overall, the rule would increase poverty and housing instability, reduce productivity and educational attainment, and drive up health care costs. The rule compounds obstacles faced by people with disabilities and their families, for example, health conditions may be made worse by a lack of food or a low-quality [diet](#).¹⁸ The proposed rule would also discourage people with mental illness from seeking services, increasing their potential for becoming involved with the criminal justice system, and it would reduce access to crucial supports for them to reenter [society](#).¹⁹

¹⁸ Steve Carlson et al., “SNAP Provides Needed Food Assistance to Millions of People with Disabilities” (Sept. 12, 2017) at: <https://www.cbpp.org/research/food-assistance/snap-provides-needed-food-assistance-to-millions-of-people-with/>; and see, National Commission on Hunger, “Freedom from Hunger: An Achievable Goal for the United States of America,” (2015) at: [https://www.aei.org/wp-content/uploads/2016/01/Hunger Commission Final Report.pdf](https://www.aei.org/wp-content/uploads/2016/01/Hunger%20Commission%20Final%20Report.pdf). (Research shows that food insecurity has negative effects on health and diet quality, and these effects may be greater for people with disabilities.) [“Return to Main Document”](#)

¹⁹ Randy Borum & Stephanie Franz, Crisis Teams May Prevent Arrest of People with Mental Illness, Mental Health Law & Policy Faculty Publications, Paper 537, 1 (2010). [“Return to Main Document”](#)

IV. The Proposed Rule Will Limit Independence and Community Integration

In addition, the proposed rule would have indirect effects on people with disabilities, as it could further shrink the number of available home care and other direct support workers – many of whom are immigrants who often rely on publicly-funded programs due to low wages and lack of health plan coverage and other benefits – leading to a loss of independence and community integration for people with [disabilities](#).²⁰ An estimated one million immigrants work in direct care, making up a quarter of the direct care [workforce](#).²¹ Nearly half of immigrant direct support workers live at or below 200% of the federal poverty level, and more than 40% rely on programs such as SNAP and [Medicaid](#).²² With the changes in the proposed public charge rule, potential direct service workers could be prevented from coming to the U.S. in the first place, and without access to health care, nutritious food and housing, many direct support workers may be unable to afford to remain in the U.S. The fear of applying for or using the healthcare services for which they are eligible means that direct support workers will also forego the services, medications, and vaccinations that help them stay consistently healthy and reliable as critical employees. The ripple effect would exacerbate the existing shortage of direct support workers, leaving people with disabilities without access to the services critical to live and participate in the community.

²⁰ Wendy Parmet & Elisabeth Ryan, “New Dangers For Immigrants And The Health Care System,” (April 20, 2018) at <https://www.healthaffairs.org/doi/10.1377/hblog20180419.892713/full/>. [“Return to Main Document”](#)

²¹ Robert Espinoza, PHI, Immigrants and the Direct Care Workforce (June 20, 2017), at <https://phinational.org/resource/immigrants-and-the-direct-care-workforce/>. [“Return to Main Document”](#)

²² Id. [“Return to Main Document”](#)

V. The Children’s Health Improvement Program (CHIP) Should Remain Excluded from the Definition of “Public Benefit” and from Public Charge Determinations

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 who earn too much to be eligible for Medicaid without a share of cost. Making the receipt of CHIP a negative factor in the public charge assessment, or including it in the “public charge” definition, would extend the problematic reach of the proposed rule 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 forgoing health care benefits, both because of the direct inclusion in the public charge determination as well as the chilling effects detailed elsewhere in these comments. Nearly 9 million children across the U.S. depend on CHIP for health [care](#).²³ Yet many eligible citizen children likely would forego CHIP – and health care services altogether – if their parents think receipt of CHIP coverage would subject someone in their family to a public charge determination.

In addition, the inclusion of CHIP in a public charge determination 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 under Medicaid and CHIP, with regular federal matching dollars, lawfully residing children and pregnant women during their first five years in the U.S. This was enacted because Congress recognized the public health, economic, and social benefits of ensuring access to care. Lawfully present children and pregnant women receiving CHIP pursuant to CHIPRA would not be subject to a public charge determination if CHIP is excluded. However, this also points out to another of the absurd results of the proposed rule – Congress certainly did not intend to subject these individuals to a public charge determination yet the

²³ See Medicaid.gov, <https://www.medicaid.gov/chip/index.html>, based on 2017 Statistical Enrollment Report. [“Return to Main Document”](#)

proposed rule would subject some to a public charge determination and others not, determined solely by whether the individual is enrolled in Medicaid or CHIP.

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](#).²⁴ The question of which programs to include should not at all consider government expenditures. Whether or not 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.

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.

VI. The Proposed Rule Hinders Our Mission

Disability Rights California's mission is to advance the rights, dignity, equal opportunities, and choices for all people with disabilities. A substantial component of our work is to assist Californians with disabilities to access public benefits to which they are entitled, and which they need to remain healthy, safe, and productive. If the proposed changes are adopted, we will face the impossible conflict of assisting our clients to access the benefits they need, which may also put them or their loved ones in jeopardy. In addition, the burden of tasking staff with understanding the complexities and uncertainties of the public charge rule as it pertains to Medi-Cal and other benefits programs we specialize in, will cause additional time and effort for staff which could otherwise be spent advocating for people with disabilities.

²⁴ 83 Fed. Reg. at 51174. ["Return to Main Document"](#)

VII. Conclusion

The proposed changes are punitive, discriminatory, and unnecessary. As the late President George H.W. Bush stated at the signing of the Americans with Disabilities Act (ADA):

This act is powerful in its simplicity. It will ensure that people with disabilities are given the basic guarantees for which they have worked so long and so hard: independence, freedom of choice, control of their lives, the opportunity to blend fully and equally into the rich mosaic of the American mainstream. Legally, it will provide our disabled community with a powerful expansion of protections and then basic civil rights. It will guarantee fair and just access to the fruits of American life which we all must be able to enjoy.

Preventing immigrants with disabilities, including seniors and children, from being part of the mosaic of this country flies in the face of what the Americans with Disabilities Act stands for, and what the United States of America should stand for. We urge that the Department withdraw this proposed rule.

Please feel free to contact Elizabeth.zirker@disabilityrightsca.org with any questions about these comments, or for additional information.

Sincerely,



Elizabeth Zirker
Managing Attorney