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December 10, 2018

Samantha Deshommes, Chief  
Regulatory Coordination Division  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
20 Massachusetts Ave, N.W.  
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 Council for Exceptional Children (CEC) submits the following comments in response to the October 10, 2018 notice by the Department Homeland Security (“the Agency”) of its proposed rule setting forth new “public charge” grounds for inadmissibility. **CEC strongly opposes the proposed rule, as it will diminish children’s access to adequate nutrition, health care, and stable housing. CEC urges the Agency to withdraw the proposed rule in its entirety.**

The Council for Exceptional Children is a professional association of 20,000 special educators and early intervention personnel dedicated to advancing the success of children and youth with disabilities. We accomplish our mission through advocacy, standards and professional development. CEC’s members serve over 7 million infants, toddlers and children and youth with disabilities across the nation in public schools and early intervention programs.

For close to a century, U.S. immigration law has used the term “public charge” to mean a person primarily dependent on the government for subsistence. The proposed rule vastly expands this definition to include individuals who simply receive one of the enumerated nutrition, health care, or housing benefits. The public charge designation has a profound effect on immigrant families, for it can bar an individual from entry to the U.S. or disqualify an applicant from legal permanent residency (“LPR”). By attaching extraordinary immigration penalties to such a wide range of vital benefits, the proposed rule would cause families to forego food, health, or housing benefits out of fear that receiving them would jeopardize the legal presence and family unity provided by a visa or LPR status. This will have a direct and harmful effect on children’s wellbeing.

The proposed rule would dramatically alter the “public charge” test with harmful consequences for children and their families. The rule proposes to change the definition of who may be deemed a public charge, as a result denied entrance to the United States or lawful permanent residency. Under the proposal, the Department of Homeland Security would consider an applicant’s use of

benefits beyond the existing standards of cash assistance and long-term institutional care to include Medicaid, the Supplemental Nutrition Assistance Program (SNAP), housing assistance and, Medicare Part D subsidies. This would likely lead individuals – including parents of U.S. citizen children—to withdraw or disenroll from benefit programs that support their health, wellbeing, and financial security. The proposal would also add specific standards for income, health, English language proficiency, and other factors making it even harder for low-income immigrant parents to obtain long-term stability for their families.

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. Parents’ own wellbeing is an important determinant of children’s health and development. Children do better when their parents are healthy and economically stable. The destabilizing effect of this rule would harm parents who lose access to benefits and their children who will be directly impacted.

Children of immigrants represent a large and growing share of children in the United States. One in every four children in the U.S. lives in an immigrant family meaning that the child or at least one parent is foreign-born. Many of these children are U.S. citizens. The experiences, development, and education of children of immigrants are consequential for our entire country. Our future is tied to their health and wellbeing, as well as their success in school and later careers.

The proposed rule would exacerbate widespread fear of accessing public programs and service to millions of children and adults, beyond those subject to the “public charge” test. The proposed regulation would make immigrant families more afraid to seek programs that support their basic needs including for their U.S. citizen children. As estimated 26 million people may potentially disenroll or refuse public benefits because of this proposed rule, including approximately 9.2 million children in immigrant households, representing approximately 13% of our nation’s child population.

The public charge test, as articulated by the proposed rule, disincentivizes participation in any of the implicated programs – namely Medicaid, SNAP, and housing assistance programs. The mere application for any of the implicated programs is enough to be considered by an immigration official, whereas receipt of any of these benefits will be a heavily weighted negative factor. These provisions will result in non-citizens withdrawing from both listed and non-listed public assistance programs – both on behalf of themselves and on behalf of their dependent children – out of fear and caution that any interaction with the federal government could result in a negative consequence to their legal status. Children will bear a significant amount of the suffering that would result from families foregoing access to public assistance for which they are otherwise eligible.

Critical public benefit programs—such as Medicaid, SNAP and housing assistance—contribute to the healthy development of children. Childhood is a formative period of development, and children need access to enough healthy foods, safe and stable housing, and adequate health care to grow up healthy and strong. Decades of research show the positive impact of public benefits—such as Medicaid, and SNAP—on children’s long-term health and their economic security. When children get access to these programs, they are both healthier, ready to learn in school and early childhood programs and their families have more money in their budget to spend on basic needs.

Schools and early childhood programs deliver health services effectively and efficiently to children since these programs are where children and youth spend most of their days. Increasing access to health care services through Medicaid improves health care and educational outcomes for children and youth including immigrant children and particularly those with disabilities. Providing health care and wellness services for immigrant children and youth through Medicaid programs helps enable these children and youth to become employable, attend higher-education and be productive contributors to society.

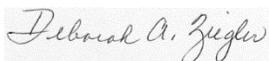
The inclusion of Medicaid as a program that can disqualify someone from gaining citizenship or maintaining a visa in the U.S. will have immediate repercussions for children's health care access inside and outside of schools and early childhood programs. While early childhood and school-based Medicaid services are technically excluded from impacting a child's future status in the U.S. by this regulation, programs are already challenged in annually enrolling children and youth into the Medicaid/CHIP program and obtaining parental consent that allows programs to be reimbursed by Medicaid for the direct health care services they provide children.

Since the news of the proposed regulation broke over the last few months, some programs are reporting that parents who are fearful about the impact of the public charge regulations are proactively revoking consent for programs to bill Medicaid for costly services under the Individuals Disabilities Education Act (IDEA) that programs provide to children and youth who qualify for early intervention and special education. Medicaid reimbursement for early intervention and special education services is a critical funding source for programs. Programs with large numbers of immigrant children and youth will struggle to meet their commitments under IDEA if parents are scared to give their consent to billing Medicaid.

Finally, the notice of proposed rulemaking also asked whether accessing the Children's Health Insurance Program (CHIP) should also impede a child's or family's ability to stay in the U.S. The answer is a resounding no. The health program, which was just reauthorized on a bipartisan basis in Congress, has provided an invaluable service to immigrant children and particularly those with disabilities by ensuring that they can access health care providers and address health issues early. If families are deterred from participating in the CHIP program the children and youth will be more reliant on emergency health services for basic medical care and lack the preventative care that can ensure they do not need emergency services in the future. By reducing the likelihood that children and youth seek medical care when appropriate, the Administration would be making a costly financial and public health mistake.

CEC believes that all children and their families deserve the fundamental security provided by adequate food, health care, and housing. Investing in these essential needs keeps children and youth with disabilities learning and engaged in schools and their families strong and contributing members of society. **For all the above reasons, we urge you to withdraw this harmful proposed rule in its entirety.**

Sincerely,



Deborah A. Ziegler, Ed.D.  
Director, Policy and Advocacy  
Council for Exceptional Children