May 19, 2021

U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

RE: USCIS-2021-004; Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input

To Whom It May Concern:

Thank you for the opportunity to comment on the Department of Homeland Security’s (DHS) Request for Public Input, “Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services” published in the Federal Register on April 19, 2021. On behalf of Children’s HealthWatch, a network of pediatricians, public health researchers, and policy and child health experts, please accept these comments and our evidence-based suggestions on how the USCIS and government agencies at large can reduce barriers to key services and programs for immigrant families. In particular, we urge the Department to undergo robust regulatory reform and participate in proactive community outreach and engagement to undo the harm that previous and ongoing discriminatory and racist policies have had on immigrant communities.

The mission of Children’s HealthWatch is to improve the health and development of young children by informing policies that address and alleviate economic hardships. We accomplish this mission by interviewing caregivers of young children on the frontlines of pediatric care, in urban emergency departments and primary care clinics in five cities: Boston, Minneapolis, Little Rock, Baltimore, and Philadelphia. Since 1998, we have interviewed over 75,000 caregivers and analyzed data from those interviews to determine the impact of public policies on the health and development of young children. Approximately 25 percent of caregivers represented in this dataset are immigrant mothers, mirroring national statistics that one in four children under age 8 in the US has at least one immigrant parent.1

As pediatricians and public health researchers, we are acutely aware of the harmful health and economic consequences resulting from long-standing exclusions of immigrant families across public programs and increased immigration and enforcement actions. These policies threaten the health and well-being of immigrant families, specifically children.2,3,4,5 As such, we are gravely concerned about the culture of fear that has been perpetuated by controversial policies that target immigrants, including families with young children, across the United States and their effects on economic hardship and health.6 Since the start of the previous Administration, families of immigrants have been unfairly targeted by a number of new policies and regulations, including the 2019 changes to the public charge rule. Our research at Children’s HealthWatch demonstrated from 2017 to 2018 a significant reduction in eligible immigrant families participating in the Supplemental Nutrition Assistance Program (SNAP) and an increase in child food insecurity.7 Other research has also shown decreases in immigrant family participation across multiple public assistance programs, for which they are eligible, concurrent with harsh rhetoric and enhanced immigration enforcement policies – known as the chilling effect.8,9,10

We are deeply appreciative of the current Administration’s reversal of several of these policies – in particular the 2019 changes to the public charge rule. We applaud Executive Order 14012, outlining the
Administration’s commitment to restoring faith in our immigration system and strengthening integration and inclusion efforts for immigrants. However, we know that these policy changes alone are not sufficient to undo the significant fear and chilling effect among immigrant communities. In order to respond to this harm, we strongly encourage USCIS to take three main steps:

1. **Engage in a proactive outreach and public education campaign.** Such a campaign would send a strong signal to immigrants and their families that they can apply for immigration status changes and benefits even if a family member needs to rely on health care, nutrition, housing, or other public assistance. This is critical to reduce the chilling effect that has been documented over the past few years, and to ensure that families and children are willing to access critical supports for their health and development. Public messaging and education, backed up by policy change, will address persistent inequities among immigrant communities that deepened over the past few years, and will promote the health and well-being of our nation as a whole as we move towards a robust and equitable recovery.

2. **Begin the process of rulemaking to modernize and clarify the narrow scope of public charge.** Although DHS’ 2019 public charge rule is no longer in effect, we strongly urge the Administration to work to promulgate and codify a new public charge rule which communicates clearly that an applicant’s or family members’ participation in health care, nutrition, housing and many other programs will not affect their ability to adjust their status or to become citizens. A new rule would be based on the 1999 Field Guidance now in effect, but updated in three key ways. It would 1) clarify key definitions and time periods in the totality of circumstances test; 2) articulate a finite list of benefits included as factors in a public charge determination; and 3) provide a comprehensive, updated list of the immigration groups exempt from public charge inadmissibility. We believe that rulemaking will solidify the progress already achieved through the reinstatement of the 1999 Field Guidance and allow for important modifications that modernize and clarify this policy.

3. **Propose changes to a key USCIS form to eliminate confusion and reduce chilling effect.** DHS should change and reorganize the Application to Register Permanent Residence or Adjust Status (Form I-485) and its instructions to 1) focus only on the programs that are relevant in a public charge determination and 2) reorganize the document to avoid the perception of conflating public assistance with criminal acts.

**Outreach and Community Education**

Despite the fact that under the 2019 DHS public charge rule only a small percentage of non-citizens could be ineligible for Legal Permanent Residency based on current benefit use,11 immigrants and their US citizen family members consistently reported forgoing benefits for which they are eligible – an impact known as the “chilling effect.” In a national survey last June, nearly one in three low-income immigrants and their U.S. citizen family members shared that they did not have access to health care and economic supports because of fear of being designated a public charge.12 Furthermore, one in three low income immigrant families reported foregoing access to public benefits -- such as SNAP, Medicaid, CHIP or housing subsidies -- out of fear, and one in five of all immigrant families – regardless of income – reported foregoing access to programs.12 Our research over the last twenty years and the work of many others demonstrates that if families are able to access supports when they fall on hard times, the health of all family members, the well-being of our communities, and our economy are strengthened.13,14,15,16
Fear of accessing these critical programs is especially alarming now, when immigrants have been particularly hard hit by the economic fallout and health consequences of the pandemic, and persistently left out of pandemic-related relief.

In 2020, Children’s HealthWatch launched a longitudinal survey to assess the impact of the COVID crisis on children and families with low incomes. Adding to the evidence of other research, initial analysis demonstrates significant inequities in hardship for immigrant families. Compared to pre-COVID levels, families of US Born mothers were 1.65 times more likely to experience housing instability while families of immigrant mothers were 2.9 times more likely to experience housing instability during COVID. Despite this incredible risk of hardship, these immigrant mothers also reported lower rates of participation in SNAP compared to US-born mothers. These findings are consistent with pre-pandemic chilling effects and may add to the growing research base documenting that immigrant families are forgoing critical health and economic support programs because of public charge concerns.

In light of the pandemic and evidence of immigrant communities’ concerns that accessing health care or nutrition benefits will prevent them from obtaining a green card or becoming a citizen, it is critical that DHS issue a FAQ that multiple federal, state and local agencies can use to answer common questions about the 1999 Field Guidance. USCIS and other federal agencies must also conduct large-scale outreach and public education to help reverse the chilling effects and other harm of the Trump-era regulations. These communications should include (but not be limited to) messages that communicate the following:

- The Biden Administration has permanently ended the 2019 changes made by the Trump Administration to public charge policy. The policy has reverted back to the previous 1999 guidance.
- COVID testing, vaccination, and care will not affect immigration status or any immigration status individuals may apply for in the future, including applications for U.S. citizenship
- Getting help with health care (except for long-term care paid for by the federal government), food, or housing also won’t affect immigration status or applications.
- Healthcare, housing and food assistance programs and tax credits serving children or other members of households won’t affect immigration status or applications.
- Only use of ongoing cash assistance programs that are intended to pay for daily living expenses, such as Supplemental Security Income and Temporary Assistance for Needy Families, and long-term institutional care at government expense are considered in the public charge test.
- Many categories of immigrants are exempt from public charge.

In this effort, USCIS and other federal agencies must engage trusted partners in immigrant communities, utilize various channels of communication, and tailor communications to be most effective for various subpopulations of immigrants.

**Rulemaking**

Although DHS’s 2019 public charge rule is no longer in effect, and work to regain the trust of immigrants and their families is proceeding, we strongly urge the Biden Administration to work quickly to promulgate a new public charge rule which communicates clearly that an applicant’s or family members’ participation in health care, nutrition, housing and many other programs will not affect their ability to adjust their status or to become citizens.
As stated above, the new rule should be based on the 1999 Field Guidance but update it in three key ways. It would 1) clarify key definitions and time periods in the totality of circumstances test; 2) articulate a finite list of benefits included as factors in a public charge determination; and 3) compile and update the immigrant groups exempt from a public charge definition. We believe that rulemaking will solidify the progress already achieved and allow for important modifications that modernize and clarify this policy.

Rulemaking is important for a number of reasons, including addressing the chilling effect of the 2019 public charge rule on public benefits use as well as applications for adjustment of status and citizenship; promoting an equitable and efficient implementation of USCIS policy, rebuilding trust with key stakeholders; and making it more difficult for a future administration to reverse the policy. In line with our partners, Children’s HealthWatch recommends the following be considered in a new rulemaking:

1. **Clarify key definitions and time periods that are part of the totality of circumstances test**
   - Clarify definitions such as “primarily dependent” and “subsistence” so that a new administration cannot issue guidance that improperly broadens the definitions.
   - Set time periods for the forward and backward-looking components of the totality of the circumstances test.

2. **Provide a clear list of benefits that count as factors in a public charge determination and publish and update guidance that provides examples of the public benefits that do not count as factors**
   - Codify in regulations a clear and finite list of benefits included as factors in a public charge determination consisting of only: Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF) and institutional long-term care paid for by Medicaid.
   - Propose that cash assistance and institutional long-term care benefits exclusively funded by states and localities should be excluded.
   - Issue guidance referenced in the rule that provides a non-exclusive list of cash and non-cash benefits that do not count as cash assistance for income maintenance in the preamble to a rule and a separate guidance document that can be easily updated. This will address confusion among immigrant families about current and future programs that they may be eligible for.

3. **Update the immigrant groups exempt from and protected against a public charge determination**
   - Clearly identify all of the categories of immigrants to whom the public charge grounds of inadmissibility do not apply.
   - Provide enduring protection from public charge inadmissibility when exempt individuals seek to adjust status through a non-exempt pathway like a family-based petition. DHS should clarify that individuals who are not subject to public charge when they apply for a status are also exempt from the public charge ground of inadmissibility when they seek to adjust their status or are adjudicated for another status that is not exempt.
   - Clarify that the public charge grounds of inadmissibility does not apply to visa holders or nonimmigrants extending or changing their status.
- Clarify the circumstances under which returning LPRs may be deemed inadmissible as likely to be a public charge as a result of their lawful conduct prior to departure.

Punishing families utilizing public services designed to improve public health places millions of children at risk of adverse health and developmental delays during a critical window of development. This, in turn, will have immediate and long-term effects on our country’s health and education systems, and the strengths and skills of our workforce.

Form Changes

To further eliminate confusion and reduce chilling effect, DHS should change the Application to Register Permanent Residence or Adjust Status (I-485) and its instructions to focus only on the programs that are relevant in a public charge determination and reorganize the document to avoid the perception of conflating public assistance with criminal acts. Furthermore,

The Current Application to Register Permanent Residence or Adjust Status (I-485) is used for people applying for lawful permanent resident status in the U.S. It includes two questions about "public assistance." Question 61 and 62 ask: "Have you received public assistance in the United States from any source, including the U.S. Government or any state, county, city or municipality (other than emergency medical treatment?)" and "Are you likely to receive public assistance in the future in the United States from any source, including the U.S. Government or any state, county, city or municipality (other than emergency medical treatment). We have heard from families and other advocates that this form is confusing and can amplify the chilling effect. USCIS should revise the form to ask only about the specific programs that are relevant to a public charge determination--cash assistance for income maintenance and institutional long-term care at government expense – and provide clear definitions in the form’s instructions. USCIS should work specifically with immigration advocates and community leaders to update form headings and instructions to reduce confusion. USCIS should provide clarity on precisely which benefits must be reported and why, will help to reduce the administrative burden for USCIS, applicants and benefit granting agencies, as well as avoid confusion and minimize the chilling effect.

The harmful, and deeply counterproductive focus of the previous Administration to attempt to implement harmful and restrictive immigration policy and to increase enforcement in sweeping fashion has contributed to a culture of fear in the immigrant community, and has harmed the health and well-being of children across America. As pediatricians and child health experts, we are appreciative of the new Administration’s commitment to reversing these harms, and the opportunity to provide recommendations to DHS on best practices to do so.

Sincerely,

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15 Sonik RA. Massachusetts inpatient Medicaid cost response to increased Supplemental Nutrition Assistance Program benefits. AJPH. 2016;106(3):443-8.


20 The Center on Budget and Policy Priorities, the Center for Law and Social Policy, and the National Immigration Law Center have shared some questions received about the 1999 Field Guidance and draft responses with USCIS staff.