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*Submitted via [www.regulations.gov](http://www.regulations.gov)*

Samantha Deshommes  
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***

Dear Ms. Deshommes:

On behalf of the Boston Bar Association's Health Law Section, we respectfully submit these comments in opposition to the proposed regulations related to inadmissibility on public charge grounds, DHS Docket No. USCIS-2010-0012.<sup>1</sup> The Health Law Section, led by a Steering committee of 20 attorneys from private law firms, government offices, law schools, biotechnology companies, and hospitals, offers resources and programming for attorneys of all levels, from corporate, litigation, white-collar, government, and other backgrounds. As members of the Health Law Section, practitioners with a broad range of health-related interests and expertise find opportunities to meet with peers, legislators, and regulators and explore pressing topical issues. We write to you today to address our concerns with the health-related implications of the proposed public charge regulation.

The proposed rule would dramatically change the way in which the Department of Homeland Security (DHS) determines whether an immigrant is likely to become a "public charge," requiring a wide-ranging investigation of an immigrant's history and economic prospects. While previously the rule only included consideration of cash assistance and long-term institutionalized care, it now also includes consideration of noncash benefits, including Medicaid, Medicare Part D prescription drug assistance, the Supplemental Nutrition Assistance Program (SNAP), and housing benefits. The Health Law Section opposes this proposed expansion as it would have negative impacts for the health and wellbeing of immigrants and their families, the public health of our communities more broadly, and the functioning of our healthcare systems.

If implemented, the proposed rule would cause many to drop or forgo the newly included benefits, including many who support themselves and their families through work but require healthcare through Medicaid or nutrition assistance. This proposed regulation would force parents to choose between accepting help for basic human needs, including medicine and health care, and keeping their families together. Since notice of the publication, many immigrants are either expressing concern about or choosing not to enroll in health insurance and healthcare assistance programs. Because of the confusion and fear about the scope of the rule, this chilling effect has extended to those who are actually entirely exempt from the public charge rule. The

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<sup>1</sup> Please note that the following comment does not reflect a position of the Boston Bar Association and is instead being in submitted on behalf of the interested section.

Massachusetts Budget and Policy Center, for example, found that roughly 25 million people may be impacted by this chilling effect, including 500,000 people in Massachusetts, 160,000 of those children, who may choose not to seek these benefits.<sup>2</sup>

As millions choose to disenroll or forgo benefits, there will be significant health consequences. In the published proposed rule, DHS itself identifies a number of negative outcomes that will result from this anticipated chilling effect. They note this could lead to “worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence” and the “increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated.”<sup>3</sup>

Here in Massachusetts, many state and local entities have affirmed that the proposed regulation will indeed result in these and other negative consequences. The Massachusetts Hospital Association, whose membership includes 71 licensed hospitals and their healthcare systems, has offered comment in strong opposition noting that the proposed rule “will have a devastating effect on immigrants in need of medically necessary care – including those that the rule does not intend to affect.”<sup>4</sup>

Additionally, the Boston Planning and Development Agency’s (BPDA) Report<sup>5</sup> on the impacts of the proposed rule identified the following:

- “[D]eferred participation in nutrition assistance programs that will...likely result in delayed negative shock to maternal and childhood health and associated long term costs to the economy....”
- “[T]he spread of communicable diseases as a result of discontinuations of treatment, especially amongst those individuals with health conditions that require long-term medically-assisted management such as HIV/AIDs.”
- “Disenrollment from immunization services ... as well as other preventative services against communicable diseases ... will have...potentially severe health consequences for both those disenrolling and the population at large.”
- “Food insecurity is likely to exacerbate particular health conditions... “
- “Reduced care for serious psychiatric illnesses could result in higher rates of suicide and substance use with consequences for both those suffering acutely from mental conditions as well as for the population broadly.”

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<sup>2</sup> [http://www.massbudget.org/report\\_window.php?loc=A-Chilly-Reception-Proposed-Immigration-Rule.html](http://www.massbudget.org/report_window.php?loc=A-Chilly-Reception-Proposed-Immigration-Rule.html)

<sup>3</sup> <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>

<sup>4</sup> Those comments also provide: “By expanding the definition of public benefits to include health coverage programs, and by specifying a low-income component in DHS’s process for determining whether an individual will likely become a “public charge”, we believe many low-income immigrants – including legal residents – will be directly discouraged from enrolling in Massachusetts health coverage programs. This will have a number of negative consequences in Massachusetts, including an increase in the number of uninsured, residents forgoing preventative and medically necessary care, overuse of emergency departments, and increased patient bad debt and hospital uncompensated care. The effect will extend well beyond the health of individual patients to affect public health and the overall stability of the healthcare system. Legal immigrants working at our hospitals will be particularly affected adversely, harming healthcare workforce productivity.” You can read the full MHA comments here: <http://www.bostonbar.org/docs/default-document-library/mha-comment-letter---public-charge---12-7-18.pdf?sfvrsn=2>

<sup>5</sup> <http://www.bostonplans.org/getattachment/e856c564-bf0f-47d4-9a44-75b430903f82>

Women, children, and other traditionally underserved populations, both immigrants and U.S. citizens, will bear the brunt of these health impacts. For example, lower rates of insurance coverage would prevent the use of prenatal and postnatal care and could lead to higher rates of low birth weight, infant mortality, and maternal co-morbidity.<sup>6</sup> Members of our Section from the Boston Children’s Hospital, who express more detailed concerns below, noted the difficulties this will cause in their ability to serve the more than 600,000 children they offer services to each year:

“...BCH...through the OGC’s Medical-Legal Partnership, supports the delivery of family-centered care by eliminating legal barriers that act as obstacles to better health outcomes. Over fifty-percent of MLP-BCH referrals involve patients and families eligible for benefits such as Social Security and/or subsidized housing including Section 8. These families often have varying immigration statuses. Since the announcement of the proposed changes to the public charge rule immigrant MLP-BCH families have demonstrated a hesitancy to apply for benefits that they need and qualify for out of a fear of how it might impact their immigration status. This fear is creating an atmosphere that may deepen disparities in health outcomes for already marginalized populations and puts strain on BCH as it works to reduce health disparities among its patients.”

Of course, these harmful health outcomes will also incur significant costs for healthcare providers as well as local and state governments. The healthcare-related costs to the city of Boston alone is estimated to be between \$14 million and \$57 million a year. That same BDPA report highlighted the severe costs the above outcomes will have:

- “Disenrollment from public insurance will result in increased uncompensated care costs to the local hospitals and increased use of emergency care,”
- “Decreased participation in [SNAP] will increase the overall costs to the economy by increasing the health care expenditure per person, and
- The “incalculable” implications to the local economy of disenrollment from immunizations services and other preventive services against communicable diseases, and
- Lost earnings from loss of productive and/or missed work due to health issues.

Enactment of this proposed regulation would result in the loss of workers and talent, as impacted individuals lose employment and school authorization, face deportation, and/or are unable to perform due to increased health issues. This will have harmful impacts on the ability of our healthcare providers and trainers, including the nation’s top hospitals and universities, to recruit the necessary workers and talent to adequately serve the health needs of our general population. Health Law Section-member attorneys from Boston Children’s Hospital expressed special concern about these impacts, noting:

“We are attorneys and immigration specialists within the Office of General Counsel (OGC) at Boston Children’s Hospital (BCH) and are strongly against the

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<sup>6</sup> <https://www.nejm.org/doi/full/10.1056/NEJMp1808020> ; <https://www.acog.org/About-ACOG/News-Room/Statements/2018/Drastic-Expansion-of-Public-Charge-Regulations-Compromise-Access-to-Womens-Health-Care>

proposed changes to the public charge rule as it will negatively impact our employees and patients and impede our ability to recruit and retain talent. BCH is the #1 Pediatric/Adolescent Medical Center in the country and the world's largest pediatric research center. BCH's renowned research and innovation relies on biomedical experts and researchers from around the world. In turn, these highly-educated trainees frequently become "next generation" leaders, both in the United States and in their countries of origin. They continue to advance U.S. leadership in health research generally, and in pediatric health specifically.

BCH currently sponsors 635 visa holders. 76 of those sponsored are biomedical researchers earning less than 250% of the FPL. BCH requires that all of our post-doctoral research fellows receive income based on their years of experience as recommended by the National Institutes of Health. The NIH salary scale may not meet the FPL threshold depending on the number of the research fellows' dependents living with them in the US. Furthermore, 45% of these biomedical researchers do not qualify for private medical insurance offered through BCH because they are supported by outside scholarships and grants from their home country and may not have sufficient means to obtain private medical insurance through the Commonwealth's health exchange (the "Connector.")

The current proposed changes to the public charge rule heavily favor individuals earning above 250% of the FPL and heavily disfavor individuals lacking private health insurance. In combination, this approach could potentially dissuade hundreds of much needed and talented researchers from applying to BCH. The proposed changes could also prevent our current researchers from obtaining a visa or extending status in the United States.

In addition to sponsored employees BCH also employs TPS and DACA holders, some of whom earn less than 250% of the FPL based on the number of people in their household. While the proposed changes to the rule on its face do not seem to impact individuals with TPS and DACA, it will if and when these individuals attempt to change their status within the United States. This is especially the case for those TPS holders whose statuses are expiring soon."

Finally, in the cost-benefit analysis provided, DHS fails to adequately calculate and explain the actual costs and burdens the proposed rule would have, both in relation to the broader public health impact and the loss of talent and workers. Any proposed regulatory changes that will likely have such sweeping nation-wide public health impacts and costs must be fully understood and explained. We urge that DHS provide the public with a detailed explanation of these burdens.

For the above reasons, the Health Law Section joins local and national health-related entities and organizations, like the Massachusetts Health and Hospital Association, the Massachusetts Medical Society, the Office of the General Counsel of Boston Children's Hospital, Children's HealthWatch, the American Hospital Association, the American Academy of Family Physicians, the American Academy of Pediatrics, the American Psychiatric Association, and many others, in opposing the proposed regulations.

We appreciate your careful consideration of the above comments. If you would like additional information, please contact BBA Legislative and Public Policy Manager Alexa Daniel at [adaniel@bostonbar.org](mailto:adaniel@bostonbar.org).

Sincerely,

BBA Health Law Section Steering Committee