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**Re: DHS Docket No. USCIS-2010-0012, RIN 1615-AA22, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds**

National Consumer Voice for Quality Long-Term Care writes in response to the Department of Homeland Security's (DHS, or the Department) Notice of Proposed Rulemaking (NPRM or proposed rule) to express our strong opposition to the changes regarding "public charge," published in the Federal Register on October 10, 2018. The proposed rule would cause serious harm to older immigrants and their families, localities, states, and health care providers and facilities, and DHS provides no justification for why changes are needed. We urge that the rule be withdrawn in its entirety, and that long-standing principles clarified in the 1999 field guidance remain in effect.

The Consumer Voice is a national organization, founded in 1975, that advocates for quality of care and quality of life with and on behalf of long-term care consumers, including those who receive long-term services (LTSS) and supports at home and in the community. Our membership is composed of residents of long-term care facilities, home care consumers, family members, long-term care ombudsmen, citizen advocacy groups, and individual advocates.

**The proposed rule represents a massive change in current policy – yet it is put forward with no rationale and in contradiction of the available evidence.**

Under longstanding guidance, only cash "welfare" assistance for income maintenance and government funded long-term institutional care can be taken into consideration in the "public charge" test – and only when it represents the majority of a person's support. If the rule is finalized, immigration officials could consider a much wider range of government programs in the "public charge" determination. These programs include most Medicaid programs, housing assistance such as Section 8 housing vouchers, Project-based Section 8, or Public Housing, SNAP (Supplemental Nutrition Assistance Program, formerly Food Stamps) and even assistance for long-term care consumers who have amassed the work history needed to qualify for Medicare and need help paying for prescription drugs.

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*The National Consumer Voice for Quality Long-Term Care (formerly NCCNHR) is a 501(c)(3) nonprofit membership organization founded in 1975 by Elma L. Holder that advocates for quality care and quality of life for consumers in all long-term-care settings.*

**The rule also makes other major changes, such as introducing an unprecedented income test and weighing negatively many factors that have never been relevant and that will make it more difficult for seniors to pass.**

The proposed rule details how being a senior, having a large family, or having a treatable medical condition could be held against immigrants seeking a permanent legal status. In addition, because this rule targets family-based immigration as well as low and moderate wage workers, it will also have a disproportionate impact on staff providing care in long-term care facilities.

**The proposed rule discourages intergenerational families.**

Instead of recognizing the value of intergenerational families who support each other, the proposed rule labels parents and grandparents as a burden because of their age, health needs, and LEP status and ignores the critical roles many families play in caring for their grandparents in need of LTSS and other family members, often enabling others to work.

Families could even be penalized for sharing housing or providing significant support to a parent or grandparent or other family member, as this would increase their household size and force them to demonstrate higher levels of income to avoid being considered a public charge.

**The proposed rule would cause major harm to older immigrants and their families and communities.**

This rule will impact seniors living in immigrant families in the U.S. who will be afraid to access services they need. Over 1.1 million noncitizens age 62 and older live in low or moderate income households,<sup>1</sup> meaning that they would have no “heavily weighed” positive factors to offset the fact that their age is considered a negative factor.

The proposal could prevent immigrants from using the programs their tax dollars help support, preventing access to essential health care, healthy, nutritious food and secure housing.

Having health insurance is especially important for long-term care consumers because they have greater health care needs. Those who receive LTSS at home require help with activities of daily living (dressing, bathing, eating), experience extremely limited mobility, and need help with receiving medications and other treatments on time. Without ongoing coverage and the assistance they need to afford their prescription drugs and other care and services, long-term care consumers are likely to develop more serious health care conditions, driving up the cost of care and creating a new uncompensated care burden on health care providers.

Moreover, Medicaid is critical for long-term services and supports. Without access to Medicaid home and community-based services fewer older adults will be able to age with dignity, at home with their families and in their communities. Medicaid is also the key to access to oral health care, transportation, and other services Medicare does not cover and long-term care consumers could otherwise not afford.

**This proposed rule threatens the well-being of caregivers, many of whom are immigrants.**

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<sup>1</sup> Manatt, Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard (Oct. 11, 2018), <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard>

Direct care workers provide critical assistance to millions of long-term care consumers who need help with dressing, bathing, eating and other daily tasks. An estimated one million immigrants work in direct care, making up a quarter of the direct care workforce.<sup>2</sup> More than four in five are women, and nearly a third are over age 55.

Because caregiving jobs tend to be part-time and low-wage, many direct care workers utilize public benefits programs to support themselves and their families. Nearly half of immigrant direct care workers live at or below 200% of the federal poverty level, and more than 40% rely on programs such as SNAP and Medicaid.<sup>3</sup> If direct care workers are afraid to access these programs, their own health and well-being will be compromised.

In the case that care workers need to use these programs to supplement their low-wage work, they may be prevented from coming to the U.S. in the first place. Without access to health care, nutritious food and housing, many care workers may be unable to afford to remain in the U.S. The ripple effect would be a shortage in direct care workers, leaving many long-term care consumers without access to the caregiving they need.

**The fear created by these rules would extend far beyond any individual who may be subject to the “public charge” test, harming entire communities as well as the infrastructure that serves all of us, such as schools, hospitals and clinics.**

All of these consequences are identified in the proposed rule itself, under costs; a substantial body of evidence demonstrates that they are highly significant and damaging.

The widespread “chilling effect” that causes families to withdraw from benefits due to fear is already evident as a result of rumors of the rule. Community providers have already reported changes in health care use, including decreased participation in Medicaid and other programs due to community fears stemming from the leaked draft regulations. Likewise, fear has already been driving immigrant families—who are eligible to receive benefits for themselves or their family members—to forgo vital health and nutrition assistance, jeopardizing the health of families and communities alike.

Historical evidence from the 1996 PRWORA policy changes, which is cited in the NPRM itself, demonstrates that public information alone cannot prevent these damaging consequences, because of the complexity of immigration policies (greatly increased by this proposed rule), among other reasons. Even among groups of immigrants who were explicitly excluded from the 1996 eligibility changes, and U.S. citizen children in mixed status families, participation dropped dramatically.<sup>4</sup>

**The negative factors outlined in the rule ignore the impact of access to public benefits and family support as positive factors in empowering future self-sufficiency.**

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<sup>2</sup> Robert Espinoza, PHI, *Immigrants and the Direct Care Workforce* (June 20, 2017), available at <https://phinational.org/resource/immigrants-and-the-direct-care-workforce/>.

<sup>3</sup> Robert Espinoza, PHI, *Immigrants and the Direct Care Workforce* (June 20, 2017) (available at <https://phinational.org/resource/immigrants-and-the-direct-care-workforce/>).

<sup>4</sup> Neeraj Kaushal and Robert Kaestner, “Welfare Reform and health insurance of Immigrants,” *Health Services Research*, 40(3), (June 2005), [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/pdf/hesr\\_00381.pdf](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/pdf/hesr_00381.pdf).

The rule does not recognize that receipt of benefits that cure a significant medical issue or provide people with the opportunity to complete education and training are highly significant positive factors that contribute to future economic self-sufficiency.

Furthermore, research shows that benefits that are included in the public charge determination, including Medicaid, have positive long-term effects on recipients. Long-term care consumers that receive Medicaid for personal care services report high satisfaction.<sup>5</sup>

## Conclusion

For these reasons detailed in the comments above, the Department should immediately withdraw its proposal, and dedicate its efforts to advancing policies that support—rather than undermine—immigrant long-term care consumers and their families in the future. If we want our communities to thrive, everyone in those communities must be able to stay together and get the care, services and support they need to remain healthy and productive.

The Consumer Voice envisions a world in which all consumers of long-term care, services and supports are treated with respect and dignity and have a wide range of affordable, quality options across all settings. These options will make it possible for individuals to receive care and services in the location and manner of their choice and to attain a high quality of life.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact Robyn Grant at [rgrant@theconsumervoice.org](mailto:rgrant@theconsumervoice.org) to provide further information.

Sincerely,



Lori Smetanka, J.D.  
Executive Director



Robyn Grant, MSW  
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<sup>5</sup> Brown, R., Carlson, B.L., Dale, S., Foster, L., Phillips, B. and Schore, J. (2007). Cash and counseling: Improving the lives of Medicaid beneficiaries who need personal care or home and community-based services. Princeton, NJ: Mathematica Policy Research. <http://www.rwif.org/en/library/research/2007/08/cash---counseling.html>; Newcomer, R.J., Kang, T. and Doty, P. (2012). Allowing spouses to be paid personal care providers: spouse availability and effects on Medicaid-funded service use and expenditures. *Gerontologist*, 52(4):517-30; Doty, P., Mahoney, K.J., and Sciegaj, M. (2010). New state strategies to meet long-term care needs. *Health Affairs. (Millwood)*, 29(1):49-56.