

STATE OF CALIFORNIA
CALIFORNIA HEALTH & HUMAN SERVICES AGENCY



October 22, 2021

Via Federal eRulemaking Portal

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security

The Honorable Ur M. Jaddou
Director
U.S. Citizenship and Immigration Services

Attn: USCIS-2021-0013
5900 Capital Gateway Drive
Camp Springs, MD 20746

RE: Advance Notice of Proposed Rulemaking: "Public Charge Ground of Inadmissibility" [RIN: 1615-AC74; CIS No. 2696-21; DHS Docket No. USCIS-2021-0013]

Dear Secretary Mayorkas and Director Jaddou:

The California Health & Human Services Agency (CalHHS), along the California Department of Health Care Services (DHCS), the California Department of Public Health (CDPH), the California Department of Social Services (CDSS) and California's Health Insurance Exchange, Covered California, submit the following comments for your consideration on the Advance Notice of Proposed Rulemaking seeking feedback to inform a future regulatory proposal on the "Public Charge Ground of Inadmissibility."

While we support the current administration's interim decision to revert to the 1999 U.S. Citizenship and Immigration Services (USCIS) Field Guidance on Deportability

and Inadmissibility on Public Charge Grounds (1999 Interim Field Guidance),¹ **it is our position that any future rule on the public charge ground of inadmissibility must eliminate the consideration of past receipt of public benefits and must not add new health and human services programs to the public charge determination.**

Our experience in California shows that changes to the public charge determination, no matter how well intended, can have direct and adverse effects on the health and well-being of millions of Californians who are subject to public charge determination, and their families. Such changes also have indirect and adverse effects on the health and well-being to entire communities, including individuals and families who are neither subject to public charge nor related to individuals who are subject to public charge.

To put this into context, under the Trump administration, the threatened and implemented changes to the public charge ground of inadmissibility, culminating in the 2019 Final Rule on Inadmissibility on Public Charge Grounds (2019 Rule),² resulted in confusion amongst Californians eligible for public benefits, fear amongst immigrants and their families, and heightened administrative burdens and costs for public benefit granting agencies at the state and local level.

Furthermore, the 2019 Rule complicated our response to the COVID-19 pandemic because many of the State's mixed status families, immigrant, or undocumented populations were reluctant to access care, reluctant to respond to contact tracing efforts, and reluctant to interact with what were perceived to be government sponsored or provided resources for fear that their information or status would be shared with federal entities and have a detrimental immigration consequences. This made messaging around public health safety measures and interventions difficult, and required the State to implement a number of tailored responses, specifically, designing messaging to indicate that individuals have access to free, confidential testing and, if needed, access to medical care regardless of immigration status, income or health insurance as well as messaging to ensure a response to local contact tracing including the critical message that "Your local health department will NOT ask for your: Social Security Number, Immigration Status or Financial information."

Future rulemaking should not include consideration past receipt of public benefits as part of the public charge determination.

We provide California residents public benefits and services, including cash assistance, with the goal of helping individuals and families get through hard times and onto a path of financial stability to achieve independence. The public charge rule's consideration of past receipt of a public benefit as a negative

¹ [\(64 Fed. Reg. 28689-92 \(May 26, 1999\).\)](#)

² [\(84 Fed. Reg. 41292 \(August 14, 2019\).\)](#)

factor belies the intent behind federal and state-funded public benefits. Any person, regardless of their socio-economic background, may at some time in their life need public assistance to ensure they and their families are housed, fed, and can connect with employment opportunities. The COVID-19 pandemic has made it clear that Californians of all backgrounds are at risk of temporary economic hardship, and this experience is not predictive of their future income. We are opposed to any consideration of past public benefit receipt in a public charge determination because it would undermine our mission to serve, aid, and protect needy and vulnerable children and adults.

The public benefits and services provided in California are vital to the health and prosperity of all Californians. Deterring individuals from accessing the public benefits for which they or their family members are eligible undermines the State's efforts to address housing insecurity, food insecurity, the medical care needs of children, public health emergencies such as the COVID-19 pandemic, state or local disasters such as wildfires, income inequality, and much more. Social service and public benefit programs have been shown to promote improvement in academic outcomes for school children and long-term health and wellness outcomes for children and adults.³ If an individual is eligible for a benefit or service, they should be encouraged to apply for and receive that benefit, as receipt will assist not only the individual, but their community and the state.

California is home to a large immigrant population. As of 2018, twenty-seven percent of California's population, approximately 10.6 million people, are foreign born.⁴ One in two children has at least one immigrant parent. In California, 74 percent of non-citizens live in households that also have citizens.⁵ Nearly 12 percent of the state's total population – about 4.7 million people – live with an undocumented family member, including about two million children younger than 18 years old.⁶ Even as formulated under the 1999 Interim Field Guidance, the public charge rule leads immigrant individuals and households to forego public benefits that they are eligible to receive and that would enable them to weather a time of crisis because they are fearful of future immigration consequences.

Under both the 1999 Interim Field Guidance and the 2019 Rule, the past receipt of multiple types of public benefits is considered in a public charge determination. By considering past receipt of public benefits, DHS is undermining key health and social service programs and initiatives, creating unnecessary burdens for benefit granting agencies, instilling fear in immigrant and mixed-status households, and

³ [SNAP, Works for America's Children, Center on Budget and Policy Priorities, September 29, 2016; SNAP Is Linked with Improved Nutritional Outcomes and Lower Health Care Costs, Center on Budget and Policy Priorities, January 17, 2018.](#)

⁴ [FACT SHEET Immigrants in California, American Immigration Council, August 2020.](#)

⁵ *Id.*

⁶ *Id.*

establishing standards that cannot be enforced equitably. The probative value of such consideration is far outweighed by the harm created. As such, the anticipated proposed rule on the public charge ground of inadmissibility should not consider any past receipt of public benefits or services.

Future rulemaking on public charge must recognize the conflicts with existing public benefit eligibility standards.

The current and prior policies regarding consideration of past receipt of public benefits disregard the federal public benefit eligibility standards created under the Personal Responsibility and Work Opportunity Act (PRWORA) of 1996. As DHS is aware, PRWORA significantly restricted immigrants' eligibility for federal, state, and local public benefits.⁷ For example, an individual cannot receive Temporary Assistance for Needy Families (TANF) benefits, CalWORKs in California, if they are currently undocumented, a recipient of Temporary Protected Status (TPS), or a non-immigrant visa holder (e.g., student visa). Individuals who can receive TANF benefits include lawful permanent residents with five years of residence, asylees, refugees, and certain trafficking survivors. Confusingly, the group of individuals who do not qualify for TANF listed above could potentially be subject to a future public charge determination, while the group of qualified immigrants would rarely, if ever, be subject to a future public charge determination.

Simply put, it is rare that an individual subject to a public charge determination would have previously been eligible to receive the benefits that are considered under both the current and past public charge policies. Therefore, continued inclusion of such consideration in any future public charge rule will continue to deter otherwise eligible individuals from participating in public benefit programs and is not a useful indicator in the overall public charge determination.

The incongruity between public benefit eligibility and the public charge policies creates confusion amongst recipients, applicants, and the public benefit granting agencies. Eligibility workers, who are not immigration law specialists, cannot advise individuals on their likelihood of being subject to a future public charge determination. As a result, public benefit granting agencies are limited to providing feedback on which benefits may be considered under current public charge policy and advising individuals to seek counsel from an immigration legal services expert to see whether they may be subject to a public charge test in the future. This messaging is confusing, does not effectively address applicant and

⁷ See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, section 401, 110 Stat. 2105 (stating that a "qualified alien," as defined by statute, "is not eligible for any public benefit" except as set forth in the statute's exceptions).

recipient concerns, and leads qualifying individuals to forego needed public benefits for which they are eligible.

Future rulemaking on public charge must consider the chilling effects on citizens and non-citizens accessing public health and human services programs.

Based on prior experience, simply issuing proposals to change the public charge determination leads to a chilling effect, causing immigrants who are eligible for health benefits—including refugees, asylees, lawful permanent residents, and U.S. citizens not regulated by public charge—to forego benefits to which they are entitled, including state and local benefits not subject to public charge consideration. When those individuals forego health and social services benefits to which they are entitled, this can 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;
- Increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment;
- Increased prevalence of communicable diseases, including among members of the U.S. citizen population;
- Increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient; and
- Increased inability to integrate into the community or establish self-sufficiency.

Any new public charge rule should not include provisions that work against high priority public health policies and goals, especially as we continue to respond to a global pandemic. Public charge requirements should not discourage immigrants from receiving health care that protects the public health, protects pregnant women and their citizen children, preserves life and limb, relieves severe pain (such as emergency care) and improves efficiency. Health benefits, of any type, should be excluded from consideration in a public charge determination.

The 2019 Rule had negative impacts on access to important public benefit programs, particularly among immigrant families and children who avoided obtaining services and benefits due to the rule. A survey conducted by the Urban Institute validated this as it found that “one in five adults in immigrant families with children (20.4 percent) reported that they or a family member avoided a public benefit such as Supplemental Nutrition Assistance Program (SNAP), Medicaid (Medi-Cal) and the Children’s Health Insurance Program (CHIP), or housing subsidies in 2019 for fear of risking future green card status; 10.0 percent of those without children avoided such a program. Among adults in low-income

immigrant families with children, over 3 in 10 (31.5 percent) reported these chilling effects.”⁸ This is consistent with research from 2019 by the Urban Institute which showed that 17 percent, one in six adults, reported that they or a family member avoided activities, such as accessing public benefits, in which they could be asked about citizenship status during 2018.⁹ Further, Latino adults were three times more likely than non-Latino white adults to report avoiding some activities.¹⁰

We received feedback from counties and non-profit partners that recipients, applicants, and other potentially eligible Californians express fear around the receipt of public benefits given the multiple changes to the public charge policies. Here are some concrete examples:

- CalFresh Outreach prime contractors, who are responsible for conducting outreach and application assistance for CalFresh (SNAP), shared in September 2021 that many of their clients (individuals applying for or considering applying for CalFresh) were afraid to apply for benefits as a result of public charge. Specifically, the contractors reported that clients were worried that the receipt of public benefits would impact their immigration status, impede their ability to become lawful permanent residents or citizens, or harm their children. The contractors reported the clients misunderstand the public charge ground of inadmissibility and avoid benefits to which they are eligible.
- CDSS’ grantees and subgrantees serve a diverse variety of immigrant communities in California, including monolingual Korean, Chinese, and Spanish-speaking communities. The grantees and subgrantees reported in the summer of 2021 that these communities continue to hesitate about accessing benefits, including COVID-19 pandemic relief, even after they are informed that pandemic benefits will not be considered in a public charge test. Community members are wary after multiple policy changes in such a short span of time. Similarly, the grantees and subgrantees reported that a lot of misinformation continues to circulate in immigrant communities, including that receipt of benefits would result in immediate immigration penalties and that naturalized citizens may be deported if they access benefits. One non-profit even reported individuals disenrolling from benefits as they were afraid continued receipt would cause them to lose their status as asylees.

⁸ Jennifer M. Haley et al. [One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019](#). June 2020. The Urban Institute.

⁹ Hamutal Berstein et al. [Adults in Immigrant Families Report Avoiding Routine Activities Because of Immigration Concerns](#). July 2019. The Urban Institute.

¹⁰ Hamutal Berstein et al. [Adults in Immigrant Families Report Avoiding Routine Activities Because of Immigration Concerns](#). July 2019. The Urban Institute.

- CDPH's Women, Infants, and Children (WIC) program, through the local agencies in California, documented incidents of WIC applicants and participants expressing fear and confusion about how their receipt of WIC benefits could be impacted by public charge. Specifically, applicants and participants communicated concerns to WIC local agency staff that applying for or receiving WIC benefits would jeopardize their immigration status, including their ability to be lawfully admitted for permanent residence, i.e., obtain "green cards." During these conversations, WIC applicants and participants asked to be disenrolled from WIC, sought to return WIC food instruments, and said that they were warned not to apply for WIC benefits. Some applicants and participants indicated that these concerns were based on discussions with legal counsel.
- CDPH's Tuberculosis Control Branch also observed the chilling effects of the 2019 Rule. Local Tuberculosis programs reporting persons exposed or with suspected or active Tuberculosis not coming in or delaying services for evaluation or care because of fear from the 2019 Rule. Additionally, some California Tuberculosis programs reported a reluctance of medical staff to ask about an important Tuberculosis risk factor - birth country - because of the chilling effects of the 2019 Rule and fear of future impacts that might be felt by patients who believe answering this question may have a negative impact on their citizenship or ability to stay in country. CDPH believes that due to concerns about the 2019 Rule and its potential effects on their families, immigrants with Tuberculosis may have been more likely to decline to seek care and may have spread Tuberculosis to others because they could not afford medical care and did not want to apply for public assistance. Similarly, immigrants with latent Tuberculosis infections who would have benefited from latent Tuberculosis infection treatment may not have sought testing and treatment, progressed to TB disease, and spread Tuberculosis to others in the community.

These incidents strongly suggested that individuals and families in California experienced the 2019 Rule's chilling effects and were afraid to apply for or use benefits even though in some instances the receipt of such benefits would not be considered under the 2019 Rule.

Future rulemaking on public charge must ensure an equitable standard for determination.

Equitable application of the public charge ground of inadmissibility is not possible under the current or past public charge policies, in large part due to the consideration of past receipt of public benefits. Since 1999, USCIS has considered benefits received in public charge determinations without consideration of the varying eligibility requirements for state or local benefits. Current and past policies have not considered the variation in benefit availability between the states and

local regions. Without this context, it is impossible for an immigration officer to accurately analyze the implications of prior receipt of any given type of benefit.

During the COVID-19 pandemic, several state and federal public benefits and tax credit payments were issued to address the economic impacts of the pandemic. While most were means-tested, several programs allowed for benefits to be provided to individuals with income under \$75,000 per year. Receipt of such a benefit cannot be found to reasonably indicate future reliance on the government for subsistence. However, under the 1999 Interim Field Guidance now in effect, receipt of cash benefits would be considered without any context as to the threshold of the means test used. As a result, while one benefit may be provided only to individuals earning under the Federal Poverty Level (FPL), another benefit could be issued to individuals earning several times the FPL, but both benefits would be considered equally under the current public charge policy.

California has recently seen an increase in guaranteed income pilots (also known as universal basic income). The majority of guaranteed income pilots are operating at a county or city government level, have some level of means test, and provide monthly cash payments for a period of at least a year. In 2021, the State of California allocated \$35 million over five years to provide grants to guaranteed income pilots operating in the state. The very nature of a guaranteed income project is to raise the income of the community across the board and not to address individual needs or personal circumstances. To exclude immigrants from these projects or to deter them from participating due to public charge concerns would undermine the goals of the pilots and would be discriminatory. As explained above, when benefits are considered by immigration officers without a detailed understanding of each benefit's means test or broader context, immigrants are indiscriminately and improperly penalized. Eliminating the consideration of past receipt of public benefits would allow these pilots to operate without excluding large swaths of the local population or unintentionally threatening an individual's future immigration case.

Under PRWORA, states have the authority to issue state and local public benefits to immigrants regardless of status, so long as the state legislature has expressly allowed for provision of benefits to immigrants who are not "qualified." As a result, some states offer many public benefits to immigrants who are not "qualified" immigrants under PRWORA or who are subject to a waiting period, while other states provide very few benefits to immigrants not eligible for federal benefits under PRWORA. California offers several such benefits, many of which are cash aid and/or designed to provide state-funded aid to individuals who would be qualified for a given federal benefit program if not for their immigration status. For

example, California offers certain immigrants who are not yet eligible for Supplemental Security Income (SSI) cash assistance via the Cash Assistance Program for Immigrants (CAPI). California has also chosen to expand Medi-Cal coverage beyond the federally allowable immigrant populations to include undocumented immigrants under 26 years of age and 50 years and over. California also administers the California Food Assistance Program (CFAP) for individuals who are qualified immigrants, but are subject to a waiting period under PRWORA and therefore cannot receive CalFresh (SNAP) benefits. According to the National Immigration Law Center, only six states currently offer state-funded nutrition assistance programs to some or all immigrants who are ineligible for SNAP: California, Connecticut, Illinois, Maine, Minnesota, and Washington.¹¹

An immigrant living in California is likely to be eligible for more public benefits than a similarly situated individual living in another state. Thus the consideration of past receipt of public benefits may be more indicative of each state's public policies than a given immigrant's ability to support themselves or their dependents. Consideration of any state or local benefits therefore only serves to undermine lawfully administered public benefits programs in more generous states and deter participation.

Without making a significantly more detailed inquiry into the benefits provided and accounting for differences between benefit availability state to state, consideration of past receipt of public benefits will create inequitable applications of the public charge ground of inadmissibility. This level of inquiry would create an unmanageable administrative burden for immigrants, benefit granting agencies, and the immigration officer making the public charge determination. Therefore, consideration of past receipt of public benefits will inevitably lead to inequitable application of the public charge ground for inadmissibility.

Future rulemaking on public charge must consider negative impacts on communicable disease prevention efforts, leading to increased rates of disease, birth defects and death for both immigrants and U.S. citizens.

Any changes to public charge determination that limit access to public benefits will have adverse impacts on public health, including increased rates of infection, disease, birth defects, and death in California and across the country. Such impacts would not be limited to individuals seeking adjustment of status who are subject to public charge determinations but would affect all residents regardless

¹¹ [TABLE 12 State-Funded Food Assistance Programs, National Immigration Law Center, April 2020.](#)

of national origin or immigration status. This is for several reasons, including (1) the anticipated chilling effect, which will deter individuals, including individuals to which public charge does not apply, from seeking or receiving the preventative and therapeutic health care benefits for which they are eligible; and (2) the fact that certain conditions, including communicable diseases, do not discriminate on the basis of immigration status such that a threat to one is a threat to all.

Our experience over the course of the past 18 months in response to the COVID-19 pandemic demonstrates the stark impact of the pandemic on certain populations with higher representation of immigrant families who are more likely to be impacted by public charge changes. For example, our Latino communities were disproportionately impacted by the pandemic. In California, Latinos are 39 percent of the state's population.¹² Fifty percent of California's immigrant population were born in Latin America.¹³ Research published by Stanford University looking at data through October 2020 illustrates how Latinos living in California are 8.1 times more likely to live in households facing higher exposure risks to COVID-19 than white Californians (23.6% versus 2.9%) and had a COVID-19 case rate more than three times that of whites (3,784 versus 1,112 per 100,000 people).¹⁴ Further, California's Latino population was tested for COVID-19 at a lower rate than the white population (35,635 versus 48,930 per 100,000 people). The Latino population had strikingly worse COVID-19 mortality outcomes as well. The death rate for Latinos (59.2 per 100,000 people) was 1.5 times higher than white residents (38.3 per 100,000 people).

To be more specific, immunizations protect both individuals and communities. Community immunity, also known as herd immunity, is achieved only when a sufficient proportion of a population is immune to an infectious disease, making the disease's spread from person to person unlikely.¹⁵ Even individuals who cannot be vaccinated due to compromised immune systems, such as newborns and persons with chronic illnesses, are offered some protection because the disease has little opportunity to spread within the community.¹⁶

Because it may not be readily discernible to the regulated public whether the receipt of immunization and treatment services for communicable diseases could affect a public charge determination, we request that DHS specifically state in any regulation text that the definition of public charge does not apply to "[p]ublic health assistance (not including any assistance under [the Medicaid program] for immunizations with respect to vaccine preventable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms

¹² Hans Johnson et al. [California's Population](#). March 2021. Public Policy Institute of California.

¹³ Hans Johnson et al. [Immigrants in California](#). March 2021. Public Policy Institute of California.

¹⁴ Marissa Reitsma et al. [Racial/Ethnic Disparities In COVID-19 Exposure Risk, Testing, And Cases At The Subcounty Level In California](#). May 2021. *Health Affairs*.

¹⁵ [Vaccine Benefits \(Mar. 6, 2014\)](#) National Institutes of Health; [Glossary \(May 31, 2016\)](#), Centers for Disease Control and Prevention.

¹⁶ [Glossary \(May 31, 2016\)](#) Centers for Disease Control and Prevention.

are caused by a communicable disease.”¹⁷ Without such changes, the proposed changes to the public charge determination are likely to cause unnecessary fear and confusion among immigrants subject to public charge and their LPR or U.S. citizen family members to whom such changes do not apply. This could lead to lower vaccination rates and weakening of herd immunity, which California has taken intentional steps to protect,¹⁸ putting both immigrants and U.S. citizens at greater risk for infection by vaccine-preventable diseases. Additionally, California law requires that children admitted to public or private school be immunized against a host of communicable diseases in order to prevent their spread.¹⁹ Any potential chilling effect on immunizations, particularly for school-aged children, will not only contravene California law and policy but will also erode the ability of children and their families to gain self-sufficiency through educational attainment.

Simply put, declining enrollment in public benefits programs, particularly those programs offering health care and immunizations services, is likely to increase the number of people—including both citizens and non-citizens—who suffer from and transmit communicable diseases, like COVID-19, in California.

Future rulemaking on public charge determination must not negatively impact California’s health coverage gains.

Since the launch of the federal Patient Protection and Affordable Care Act, California has taken many steps to dramatically improve access to quality health care in the state. That endeavor is supported by the expansion of Medi-Cal (California’s Medicaid Program), which currently provides health coverage to an estimated 36 million Californians,²⁰ including more than 3.7 million people who are currently enrolled due to the Affordable Care Act expansion.²¹ Since Covered California first opened its doors in 2014, more than 5.3 million people have been insured for at least one month directly through the exchange, and millions more have purchased coverage in the individual market off-exchange — benefiting from lower premiums driven by the healthier risk mix that is the result of Covered California’s marketing and policies. California’s uninsured rate has dropped 10 points since 2013,²² the year prior to the implementation of the Affordable Care Act, which is the biggest decrease of any state in the nation. In recent years, California’s uninsured rate held steady at 7.2 percent through 2018, which is in

¹⁷ 8 U.S.C. § 1611(b)(1)(C).

¹⁸ Sen. Bill 277, 2015-2016 Leg. Sess. (Cal. 2015) (“[I]t is the intent of the Legislature to provide . . . [a] means for the eventual achievement of total immunization of appropriate age groups against the [listed] childhood diseases . . .”).

¹⁹ Cal. Health & Safety Code § 120335.

²⁰ [U.S. Census Bureau, Health Insurance Coverage in the United States, 2018, Sept. 2019.](#)

²¹ [Medi-Cal, Fast Facts, Dec. 2019.](#)

²² [U.S. Census Bureau, Health Insurance Coverage in the United States: 2013, Sept. 2014.](#)

sharp contrast to the rest of the country, where the percentage of uninsured rose to 8.9 percent.²³

DHCS is the single state agency authorized to administer California's Medicaid program, known as Medi-Cal. Approximately 14.2 million Californians, one-third of California's population, receive health care services financed or organized by DHCS, making the department the largest health care purchaser in California. In fact, 51 percent of births in California are covered by Medi-Cal and 55 percent of all school age children are covered by Medi-Cal. DHCS oversees the expenditure of more than \$100 billion for the care of citizen and non-citizen low-income families, children, pregnant women, seniors, and persons with disabilities. Among the programs administered by DHCS, some of which are mandated by the federal government and others required by state law, are California Children's Services; the Child Health and Disability Prevention program; the Genetically Handicapped Persons Program; the Newborn Hearing Screening Program; the Family Planning, Access, Care, and Treatment program; the Program of All-Inclusive Care for the Elderly, and Every Woman Counts. DHCS also administers programs for underserved Californians, including farm workers and Native American communities.

Like California's overall population, Medi-Cal's population is diverse. Approximately 17 percent of individuals enrolled in Medi-Cal are non-citizens. Among Medi-Cal's non-citizen population there are a number of subgroups, and these subgroups are afforded varying degrees of health care coverage. For some non-citizen subgroups, only emergency and/or pregnancy-related and long-term care services are available. This coverage is referred to as "restricted scope" Medi-Cal. For others, all services under California's Medicaid State Plan are available. This coverage is referred to as "full scope."

In total, more than two million Medi-Cal beneficiaries are non-citizens. While many lawfully present non-citizens are exempt from public charge determinations (e.g., refugees, asylees admitted to the United States and others), nearly half of non-citizen Medi-Cal beneficiaries are undocumented and could be subject to public charge determination in the future, or may believe they will be subject to a public charge determination.

California's undocumented non-citizens who are eligible to receive pregnancy related or full-scope Medi-Cal services and who are impacted by the chilling effects of a public charge rule may avoid treatment altogether while others will likely resort to episodic and more costly emergency room treatment (which is paid by the federal government and not subject to public charge). As a result, many individuals may risk suffering severe pain, injury or even death. Poor health, of course, also has a cascading effect on other social and economic factors, for example, impacts on an individual's ability to work or a child's ability to learn and

²³ U.S. Census Bureau, Health Insurance Coverage in the United States: 2018, Sept. 2019.

attend school. Thus, while anticipated health impacts alone are cause for grave concern, it is also anticipated that the health impacts will have a detrimental impact on California's workforce and the education and long-term development of California's children.

Like the impacts on beneficiaries of the Medi-Cal program, beneficiaries in other health programs operated by DHCS, may also be impacted by chilling effects associated with public charge determinations. These beneficiaries include recipients of breast and cervical cancer screening and treatment, genetically handicapped services, prostate cancer treatment and family planning services. These programs serve as a safety net for those who are otherwise not eligible for full-scope Medi-Cal, covering over 1.5 million individuals collectively. Many immigrants may avoid, not only all Medicaid services, but also these other DHCS programs, for fear of contact with any government sponsored health programs due to perceived immigration consequences. If individuals avoid the preventive care and treatment provided by these programs, it will increase an individual's risk of late stage disease detection, unintended pregnancy, poor birth outcomes and increased morbidity and mortality for late stage disease.

In addition to the individual and larger public health impact, any chilling effects due to public charge policy result in significant economic burdens for California's health care safety net. In recent years, the State has experienced a considerable decrease in the number of uninsured residents. This is predominantly attributable to the expansion of eligibility in the Medi-Cal program, which has reduced uncompensated care costs and allowed greater access to preventive care and earlier health interventions. If the number of uninsured in California were to increase and overall public health decline as a result of these changes, California would incur a negative economic impact due to the accompanying increase in uncompensated care costs that would follow. These uncompensated care costs would then be shifted to the broader health care delivery system resulting in higher costs for public and private health care payers.

In addition to Medi-Cal, California has significantly expanded health insurance coverage through its Health Exchange, Covered California. Covered California remained on the forefront of improving coverage affordability; promoting enrollment and retention; and responding to the impact of the COVID-19 pandemic throughout 2019-20. In 2020, Covered California implemented new state premium subsidies making coverage more affordable for low-income Californians, with our state becoming the first in the nation to provide financial assistance to middle-income consumers who do not receive any federal financial help. Nearly 1.6 million Californians have renewed their coverage or enrolled for the first time for 2021 coverage, setting a new enrollment record in the midst of the worst COVID-19 spike since the beginning of the pandemic. Any changes to the public charge determination that would chill enrollment in Covered California would have significant impacts on health outcomes.

Future rulemaking on public charge determination must consider administrative burdens for public benefit granting agencies.

As state government public benefit granting agencies, CalHHS, CDSS, CDPH, DHCS, and Covered California provide state administration and oversight of both federal and state public benefits. The state agencies work in conjunction with county welfare departments, county health officers, non-profit organizations, contractors, and school districts to administer those federal and state public benefits to individuals and communities. As part of the state-level administration, we provide policy guidance and public-facing materials addressing issues such as public charge to ensure that messaging is consistent across the state and local-level administering organizations. Additionally, the state-level public benefit granting agencies are responsible for designing and implementing new public benefit and services programs. The current and past public charge policies requiring consideration of past receipt of public benefits significantly increase administrative workload, state costs, and county costs while also creating an insurmountable public messaging issue.

Each iteration of the public charge rule or policy has required public benefit granting agencies to conduct an internal analysis to determine impact on each public benefit program or service. For context, CDSS oversees dozens of public benefits and services, each with unique eligibility criteria, benefit type (cash, food, vouchers, etc.), and funding sources (federal, state, and/or local). During the Trump administration, CDSS conducted multiple comprehensive reviews to determine which public benefits and services would be considered under each leaked draft of a new public charge rule, the 2018 Notice of Proposed Rulemaking on Inadmissibility on Public Charge Grounds (2018 Proposed Rule), and the 2019 Rule. These reviews required analysis from policy and legal experts throughout CDSS and amounted to hundreds of hours of staff time. To ensure accurate analysis, CDSS' immigration policy and legal experts conducted multiple internal, department-wide trainings on the topic of the public charge ground of inadmissibility and the various iterations of the policy and rule. The CDSS' analysis was then used to provide policy guidance to local and non-profit partners and develop public-facing materials.

It is in part the responsibility of the state agency overseeing the federal and state public benefit programs to ensure that accurate and consistent public outreach and messaging materials are provided to county and non-profit partners as well as the public at large. As explained above, the development of clear and simple messaging on the topic of public charge has been difficult given the complex nature of immigration law and the repeated changes to the public charge policy

and rule. With input from CDSS, CDPH, and DHCS, CalHHS created and publicly released a one-page Public Charge Guide.²⁴ This guide has been updated multiple times since its initial publication during the previous Administration. The guide provides key points about the public charge policy in simple verbiage.

Similarly, CDSS' CalFresh Outreach staff amended outreach materials for CalFresh (SNAP) and state-funded nutrition programs multiple times during the Trump Administration to help explain the public charge implications of receiving each type of nutrition benefit and which immigrant groups could be impacted. Language access requirements necessitate the translation of these materials into multiple languages, which requires staff time and resources to ensure that the messaging is accurate and accessible. GetCalFresh.org is the website most commonly used to submit an electronic application for CalFresh. With assistance from CDSS, GetCalFresh.org's frequently asked questions on immigrant eligibility were repeatedly updated to address changes in public charge policy. Had the 2019 Public Charge Final Rule not been rescinded, CalFresh forms and notices would have also required amendments, as some currently state that CalFresh is not considered in public charge determinations. Administrative costs related to the CalFresh program are shared between the U.S. Department of Agriculture, CDSS, and the county welfare departments.

Unfortunately, it is not possible to create an outreach document that serves to inform each immigrant as to whether or not they will be subject to a future public charge determination and if so, which benefits may be considered in that determination. To address this issue, the guide and all other public messaging created by California's public benefit granting agencies instruct recipients to seek legal counsel and provide a link to state funded legal services non-profits. In 2018, CDSS awarded a state-funded grant of \$1,212,000 entitled Public Benefits for Immigrants Outreach (PBIO) to a non-profit partner to provide technical assistance and training materials for legal service providers and community advocates on public charge. An additional \$1,000,000 was issued under this grant program in 2019. Under the PBIO grant program, 40,912 individuals received training on the public charge ground for inadmissibility and related immigration and public benefit eligibility issues. CDSS also awarded \$228,000 in funding to a nonprofit partner to train county staff and eligibility workers on public charge.

In California, county welfare departments (CWDs) are responsible for the administration of many of our public benefit programs including CalWORKs, CalFresh, Medi-Cal, In-Home Supportive Services, Refugee Cash Assistance, and Refugee Social Services. While CWD eligibility workers are not permitted to

²⁴ [Public Charge Guide, California Health and Human Services Agency, March 2021](#)

provide legal counsel on an individual's immigration case, it is necessary that they have a working knowledge of what the public charge policy is and how to answer questions regarding public charge from applicants or recipients of public benefits. To address this need, we awarded a state-funded grant of \$228,400 in 2019 to a non-profit partner to conduct trainings and develop reference materials for CWD eligibility workers on the topic of public charge. Under this grant, 1,830 county workers received trainings and materials.

The 2019 Rule required immigrants to provide significant supporting documentation to show which benefits they received and the period(s) of receipt. These documents were attached to the Form I-944, Declaration of Self-Sufficiency. In order to obtain documentation requested in the I-944 instructions, immigrants reached out to the CWDs for records related to their receipt of benefits. The CWDs did not have an automated process to pull the specific information requested by the I-944 and would not be able to fund or complete an automation process for several more years due to competing projects. The CDSS worked with the CWDs to develop materials meant to capture which documents can be requested and how they can be provided. These documents were not universally implemented prior to the rescission of the 2019 Rule.

In addition to the administrative costs related to analysis, messaging, and training on the impacts of the public charge policy on existing public benefits, the consideration of past receipt of public benefits in public charge determinations creates additional administrative hurdles for benefit granting agencies when developing new benefit programs. When designing a new state public benefit meant to serve mixed-status or undocumented populations, the state public benefit granting agency must determine whether the benefit could be considered in a future public charge determination and, if so, whether steps should be taken to redesign the benefit to avoid such impacts. For example, certain disaster and emergency benefits have been provided in non-cash forms or without a means test in order to avoid public charge implications. These design changes are necessary to ensure that eligible populations are willing to receive necessary benefits instead of trying to overcome sudden hardship without necessary support out of fear of possible immigration consequences. The design changes are also required to allow for simple and effective outreach and public messaging. Unfortunately, these design changes can also limit a program's effectiveness and delay implementation. Cash benefits are often the easiest to administer and the most helpful to families in need, whereas non-cash benefits often require more detailed rules and mechanisms for distribution.

It is clear that the 2019 Rule cost California millions of dollars in staff time and grant funding. However, the continued consideration of past receipt of public benefits

under the 1999 Interim Field Guidance requires the State to fund analysis of new programs, creation of public outreach materials, and training for staff and partner organizations. The removal of consideration of past receipt of public benefits from any future public charge rule would save federal, state, and local benefit granting agencies significant funding each year and allow for simpler and more effective administration of public benefit programs.

Future rulemaking on public charge determination must be rooted in the law and evidence.

It is important to note that it is the province of Congress, not DHS, to change the statutory eligibility requirements for various federally administered public benefits programs, including the enumerated public benefits that DHS may seek to incorporate into future changes to the public charge determination. Promulgating regulations, which are designed to achieve the same *effects* as changing eligibility requirements—decreased and foregone enrollment in public benefit programs by certain populations—usurps the role of Congress. If Congress wanted to achieve additional self-sufficiency or cost-savings goals, it could alter the eligibility rules for the enumerated programs. Congress has declined to do so, and in fact expanded eligibility for some programs following the enactment of PRWORA and IIRIRA in 1996. For example, in 2002, Congress restored SNAP eligibility for all qualified immigrant children.²⁵

It is also imperative for DHS to consult with federal benefit-granting agencies such as the U.S. Department of Health and Human Services (HHS), U.S. Department of Agriculture (USDA), and the U.S. Department of Housing and Urban Development (HUD) in developing any changes to the current public charge determination and should publicly disclose copies of any written feedback it received from these agencies.²⁶ In fact, we are ready and willing to assist those agencies as needed with information gathering.

Congress chose to allow the States to exclude²⁷ certain immigrant groups from PRWORA's restrictions on immigrant eligibility for public benefit programs, including Medicaid, CHIP, WIC, and SNAP, in recognition of the fact that such programs provide essential health care and nutrition services to immigrants and their families, including U.S. citizen children, promote public health, and protect the general welfare of communities. **We urge DHS, as part of any future**

²⁵ Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, § 4401, 116 Stat. 134 (amending 8 U.S.C. § 1612(a)(2)(J) to restore eligibility for SNAP or “food stamp” benefits to all qualified alien children under age 18).

²⁶ This request is based on INS's inclusion of the letters from HHS, USDA, and SSA as part of the appendix to its proposed rule in 1999. 64 Fed. Reg. at 28686-88.

²⁷ 83 Fed. Reg. at 51131 (citing 8 U.S.C. § 1621(d)).

rulemaking on public charge determination, to eliminate the consideration of past receipt of public benefits and not to add new health and human services programs to the public charge determination.

Sincerely,

/s/

Mark Ghaly, MD, MPH

Secretary, Health and Human Services

/s/

Michelle Baass

Director, Health Care Services

/s/

Tomas Aragon, MD, DrPH

Director, Public Health

/s/

Kim Johnson

Director, Social Services

/s/

Peter Lee

Executive Director, Covered California