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December 10, 2018

Samantha Deshombres  
Chief, Regulatory Coordination Division  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
**Attention: DHS Docket No. USCIS-2010-0012**  
Washington, D.C. 20528

***RE: Inadmissibility on Public Charge Grounds, 8 CFR Parts 103, 212, 213, 214, 245 and 248***

Dear Ms. Deshombres:

The Conference of Boston Teaching Hospitals (COBTH) welcomes this opportunity to comment on the proposed rule entitled “Inadmissibility on Public Charge Grounds,” 83 *Fed. Reg.* 51114 (October 10, 2018), issued by the Department of Homeland Security (DHS or the Department).

COBTH is an organization of twelve Boston-area teaching hospitals that works to advance policies critical to the core mission of academic medical centers: advancing medical education, funding biomedical research, improving patient care and serving vulnerable populations.

As healthcare providers, COBTH member hospitals remain committed to providing quality and affordable care to all who need it, and to ensure the long term viability and health of our communities. In this spirit, COBTH and our member hospitals wish to voice our opposition to a number of provisions put forward in the Department’s proposed rule changing the purview of what public benefits may be considered when making a public charge determination. It is our view that many of the changes included in the proposed rule, as detailed below, will lead to declining access to care for citizen and non-citizen immigrant communities, worsening health outcomes for these communities, and an increase in uncompensated care delivered in our hospitals. In short, this proposal would impair the ability of our member hospitals to best serve our patients and larger communities.

### **Summary of Major Policy Issues on Which COBTH Provides Comments**

The following items reflect COBTH’s recommendations in regards to key provisions in the proposed rule:

- **Inclusion of health and nutritional benefits in public charge determinations:** COBTH strongly opposes the inclusion of public health and nutritional benefits in making public charge determinations. Since 1999, public charge determinations have focused on an individual’s past, and potentially future, utilization of public cash benefits, while ignoring utilization of public health and nutritional benefits; under current law, an individual is only labeled a public charge if the government can show that this individual is likely to be, “primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance, or institutionalized for long-term care at government expense.”<sup>1</sup>

Official guidance on public charge determinations published by DHS in 1999 cited Department policy not to include Medicaid, CHIP, or nutritional support programs in the determination process do to findings

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<sup>1</sup>Immigration and Naturalization Service - “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds”

that this would have, “deterred eligible aliens and their families, *including U.S. citizen children*, from seeking important health and nutrition benefits that they are legally entitled to receive.” Further, the Department stated in the same guidance that this deterrence to utilizing health and nutritional benefits would not only harm the eligible individuals, but would adversely affect “public health and the general welfare.”<sup>2</sup>

- **Creating a climate of fear and a “chilling effect” in immigrant communities:** COBTH member hospitals are committed to improving the health of all members of our communities. As such, we are greatly concerned that the proposed changes to which federal benefits may be considered in making a public charge determination will contribute to a culture of fear throughout immigrant communities. The inclusion of non-emergency Medicaid coverage, subsidies for low income earners under Medicare Part D, Section 8 Housing Assistance, and nutritional assistance programs including the Supplemental Assistance Program (SNAP) will almost certainly lead to a decrease in the legitimate utilization of these programs by immigrant families. This will not only deny health coverage, housing, and nutritional support to numerous lawfully present immigrants, but to their largely U.S. born children as well.

A Kaiser Family Foundation report found that this proposed rule will lead immigrant heads of household not to claim public benefits which they qualify for and/or to cease enrollment in these programs for themselves and their dependents. Specifically, the report estimates that implementation of this proposed rule will likely lead to disenrollment rates of between 15% to 35% for both Medicaid and CHIP among citizen children with a non-citizen parent. In gross terms, this amounts from anywhere between 875,000 to 2,000,000 citizen children losing public health coverage for which they are still eligible.<sup>3</sup>

Preventing immigrants, including the citizen or legal permanent resident members of immigrant families, from claiming health and nutrition benefits out of fear of federal repercussions will lead to sicker, malnourished, and desperate communities throughout our nation. The cost of this, both financial and otherwise, will be felt far beyond immigrant communities and will negatively impact the countries health system and economic outlook.

- **Direct impact on hospitals, patients, and uncompensated care:** COBTH hospitals offer quality healthcare to all who need it, regardless of ability to pay. If public charge determinations are changed as proposed, we expect to see a significant increase in the number of patients seeking care without coverage, as immigrants without legal permanent residence status and their families will choose not to apply for public benefits including Medicaid, CHIP, and nutritional support programs. A 2018 study from Manatt Health predicts that disenrollment of immigrants and their citizen family members from Medicaid and CHIP will be substantial, with up to 13.2 million people nationwide forfeiting coverage out of fear.<sup>4</sup> It should be noted that this analysis predicts that of those leaving the Medicaid and CHIP roles, the majority, 8.8 million people, would be citizen children and adult family members of immigrants that are otherwise legitimately eligible to receive these benefits. This mass disenrollment is projected to lead to a direct reduction of \$17 billion in payments to hospitals from Medicaid and CHIP.<sup>5</sup> This reduction in payments will disproportionately harm safety net and community hospitals that serve a greater share of Medicaid and CHIP patients and often operate with razor thin margins.

The impact of denying these essential benefits to eligible immigrant families will be twofold; affected immigrants and their dependents will be less able and likely to access health care and that care will increasingly be sought for and provided in hospital emergency departments. As a result, we expect immigrant communities to experience losses in health coverage leading to worsening health outcomes while our member hospitals will have to shoulder a rising uncompensated care burden incurred when these newly uninsured patients do seek needed care, typically in a hospital emergency department. Additionally, loss of health coverage will dramatically constrict access to preventative medicine and health care for immigrant families, leading to delayed diagnoses of serious health conditions, increases in

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<sup>2</sup> Ibid

<sup>3</sup> Kaiser Family Foundation – “Proposed Changes to “Public Charge” Policies for Immigrants: Implications for Health Coverage

<sup>4</sup> Manatt Health – Medicaid Payments at Risk for Hospitals Under the Proposed Public Charge Rule – Nov. 2018

<sup>5</sup> Ibid

utilization of costly emergency care, and increased rates of mortality.<sup>6</sup> It is likely that the increased cost of providing largely uncompensated care to newly uninsured immigrant communities will result in higher health care costs for all consumers, as hospitals and insurers will seek to recoup the rising cost of providing care to new numbers of uninsured patients by hiking the cost of health services, raising premiums, or increasing consumer cost sharing.

- **Children’s Health Insurance Plan (CHIP):** In the Department’s draft regulation, there is a request for comments regarding DHS’s potential inclusion of the Children’s Health Insurance Plan (CHIP) as a public benefit for the purpose of making public charge determinations. COBTH strongly opposes any use of CHIP utilization as a measure for whether someone is determined to be a public charge. 220,128 children in Massachusetts received their health coverage from CHIP in 2017, the vast majority of them from low and middle income households.<sup>7</sup> As much as CHIP remains a partnership between state and federal governments, the program has generally been administered by the states and has often served as an area of experimentation in health policy. As allowed under the 2009 Children’s Health Insurance Plan Reauthorization Act (CHIPRA), Massachusetts, along with twenty-three other states, has voluntarily expanded its state CHIP program to offer health coverage to income eligible immigrant children without the five year moratorium imposed on other programs like Medicaid for lawfully present immigrants. All coverage provided to these immigrant children via the state CHIP program is paid for without the use of federal funds.<sup>8</sup>

We are concerned that making the collection of CHIP benefits a factor in determining an individual a public charge will deter immigrant families from seeking coverage for their eligible, lawfully present, and in many cases, *U.S. born citizen children*. As a state that has made a sustained and dedicated commitment to universal health coverage, the idea that federal immigration policy would drive Massachusetts residents off of state funded health insurance for children by creating a climate of fear is deeply disturbing and antithetical to the principles of good governance and our Commonwealth.

Thank you for the opportunity to comment on this proposed regulation, “*Inadmissibility on Public Charge Grounds*.” COBTH looks forward to continuing to work with the Department on this issue.

Sincerely,



John Erwin  
Executive Director  
Conference of Boston Teaching Hospitals

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<sup>6</sup> Institute of Medicine Committee on the Consequences of Uninsurance – Effects of Health Insurance on Health

<sup>7</sup> Centers for Medicare & Medicaid Services – 2017 CHIP Annual Enrollment Report

<sup>8</sup> National Academy for State Health Policy – Massachusetts 2016 CHIP Fact Sheet