

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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December 10, 2018

The Honorable Kirstjen M. Nielsen
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Nielsen,

We write to express our grave concerns with the proposed rule published on October 10, 2018 by the Department of Homeland Security (DHS) that would significantly alter the public charge test, which has been part of federal immigration law for decades. This test is designed to identify people who depend on government benefits as their main source of support. Under longstanding policy, the federal government can deny an individual entry into the United States or adjust legal permanent resident (LPR) status (i.e., a green card) if he or she is determined likely to become a public charge.

Current public charge policy appropriately limits the benefits considered to be cash assistance, such as Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF) and comparable state and local programs and government-funded institutional long-term care.

Under the changes in the proposed rule in making a public charge determination, immigration officials would also consider non-cash benefits from programs that support work and improve health, including Medicaid and SNAP (formerly known as food stamps). These programs served one in three U.S. born individuals in 2015. This is far harsher from the current standard, which looks at receipt of cash assistance or long-term institutionalization at government expense in determining whether an individual is a public charge. Modest amounts of assistance could be considered in making a public charge determination, even if the benefits reflect only a small share of an immigrant's total income.

We are strongly opposed to the inclusion of Medicaid in public charge determinations. Congress is responsible for making decisions about the eligibility of immigrants for benefits under federal health programs, and it is highly inappropriate for DHS to override Congress' intent and effectively deny immigrants access to Medicaid benefits by including such benefits in a public charge determination.

Further, we are adamantly opposed to the inclusion of benefits provided under the Children's Health Insurance Program (CHIP) in a public charge determination.

We are also alarmed by the decision to categorize the Medicare Part D Low-Income Subsidy (LIS) Program, which is only available to individuals who worked and earned Medicare benefits, as a sign that an individual is a "public charge." This would harm seniors and individuals with disabilities who rely on Medicaid and the Medicare LIS Program. Almost one in three Medicare beneficiaries enrolled in Part D prescription drug coverage get "Extra Help" with their premiums and copays through the Medicare LIS program. Nearly 11 million seniors and people with disabilities are enrolled in both Medicare and Medicaid, and one in five Medicare beneficiaries rely on Medicaid to help them pay for Medicare premiums and cost-sharing.

Decreased participation for eligible individuals

In addition to the direct effects of including enrollment in health, nutrition and housing programs as part of the public charge determination, we are very concerned that the changes would likely lead to broad loss of food, housing, and health care among U.S. citizen children living in immigrant families and among senior citizens who are legal permanent residents, because many families will likely be confused and frightened that accepting help with basic needs will put their immigration status at risk. This chilling effect likely will cause many individuals not directly subject to a public charge determination to forego Medicaid, CHIP, Medicare, SNAP and other benefits because of confusion about its application. Nationwide, over 19 million children, or one in four (25 percent) kids, live in a family with an immigrant parent, and nearly nine in ten (86 percent) of these children are citizens. Even though most of these children are citizens, many families will likely fear enrolling them in Medicaid, leaving them without a regular source of health care and putting their long-term health and development at risk.

Discrimination against individuals with disabilities

We are also very concerned about the proposed rule's impact on individuals with disabilities. Since health is one factor in the public charge determination, an individual with a disability or chronic condition may face additional barriers to enter the United States, extend their stay, change their status, or obtain a green card. The Administration says it will consider an individual's disability because it may affect an individual's ability to work, attend school, or otherwise care for him or herself. Given Congress' enactment of numerous civil rights laws protecting individuals with disabilities from discrimination, including the Americans with Disabilities Act, Section 1557 of the Affordable Care Act, and the Rehabilitation Act, we are opposed to DHS considering an individual's disability or chronic condition as part of a public charge determination.

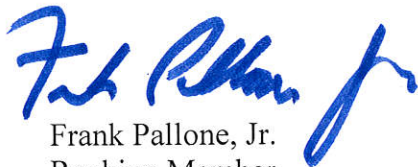
Fracturing families

As a result of this proposal, U.S. citizens and residents may no longer be able to welcome their parents into the country, even if they are willing and able to sign an affidavit of support. Seniors and their families may be afraid to go to the doctor or get help paying for food or rent. This proposed rule's focus on paid work ignores the other critical roles many older people play in our society, for example grandparents in caring for their grandchildren and other family members or even older Americans as a paid or unpaid elder care workforce.

If finalized, the rule would directly and indirectly exacerbate and undermine participation in public programs that support work, strengthen families, and provide basic necessities to children that are critical in their development to become strong, productive adults. It would do this through the threat—both real and perceived—that seeking benefits could affect immigration status or entry into the United States. This would increase hunger and food insecurity and could force older adults and their families to forgo needed health care and services.

We strongly urge the Department to withdraw this ill-conceived proposed rule immediately.

Sincerely,



Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce



Richard E. Neal
Ranking Member
Committee on Ways and Means