

December 6, 2018

The Honorable Kirstjen Nielsen
Secretary of the Department of Homeland Security
20 Massachusetts NW
Washington, DC 20529-2140

Re: Comment on the proposed changes to the Inadmissibility and Deportability on Public Charge Grounds proposed rule (DHS Docket No. USCIS-2010-0012)

Dear Madam Secretary:

As the Medicaid Advisory Committee (MAC) of Oregon, we are taking the opportunity to provide comment on the proposed changes to the Inadmissibility and Deportability on Public Charge Grounds proposed rule (DHS Docket No. USCIS-2010-0012). We anticipate that the proposed rule will significantly and negatively impact immigrant children and families in Oregon as they may unnecessarily avoid seeking health coverage and needed health care, resulting in higher health care costs to providers and a greater risk to the public's health. Furthermore, the proposal undermines efforts in Oregon to move upstream to address the social determinants of health and health equity.

Primarily for these reasons, as well as those detailed in the comments from the Oregon Health Authority (OHA) and the Department of Human Services (DHS), Medicaid, the Supplemental Nutrition Assistance Program, and housing subsidies should never be considered in the definition of "public charge." We advise you to immediately withdraw the current proposal, and instead dedicate efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants to support themselves and their families in the future

The Medicaid Advisory Committee (MAC) is a federally mandated body that brings together perspectives from providers, members, advocates, Coordinated Care Organizations (CCOs), and health policy experts, to advise the State Medicaid Director of OHA and the DHS on policy and operational improvements to Oregon's Medicaid program (the Oregon Health Plan). One in four Oregonians, or nearly one million people, receive coverage through the Oregon Health Plan – coverage, not cash assistance. This proposal penalizes those who seek to take responsibility for their health and their family members' health by trying to stigmatize Medicaid as a welfare program. In reality, Medicaid is a foundation that helps to support individuals improve and maintain their health in order become economically independent and thrive.

This proposed rule is of particular concern in Oregon, where one in ten Oregon residents is an immigrant and one in eight residents is a native-born U.S. citizen with at least one immigrant parent. Immigrants in Oregon are workers, students, business owners, taxpayers, family members and community leaders and are integral to the fabric of our state. It is not in keeping with Oregon's values and priorities to treat immigrants differently than any other resident in our state, especially when it comes to their health. While the Department of Homeland Security has not justified why such changes are needed, the proposed rule appears to be inspired by assumptions around the fiscal impacts of health care utilization by immigrants. However, the evidence

indicates that immigrants build the economy and use fewer healthcare resources, compared to their non-immigrant counterparts.

The success of Oregon's health system transformation is directly linked to our state's efforts to ensure access to health insurance and health care. This bipartisan work has resulted in 100 percent of children, immigrant and non-immigrant alike, having access to comprehensive health coverage and more than 97 percent enrolled in qualified health coverage. Similarly, nearly 94 percent of all Oregonians have health coverage. Across the lifespan, health insurance results in better outcomes (such as healthier pregnancies, childhood outcomes, and lower chronic disease rates) and lower costs (such as reduced emergency department usage and less reliance on the safety net system). These accomplishments would be immediately at risk if the proposed rule continues in its current state.

As proposed, this rule would result in:

Loss of health care coverage among legal immigrants

The chilling effect of this rule would result in legal immigrants choosing to disenroll or forego enrollment not only in Medicaid and CHIP, but avoid other health coverage and services programs as well. This reaction due to fear of negative immigration consequences and general complexity and confusion of the rule will lead to worse health outcomes and increased utilization of emergency medical care as a method of primary health care (as stated by the Department of Homeland Security).

How this might impact Oregon Health Plan members:

Along with innovative efforts to improve health care quality and reduce costs, Oregon's effort to increase access to care through Medicaid expansion over the past five years resulted in increased enrollment in primary care homes, decreased emergency department use, higher rates of screening for depression, and a number of improvements specific to kids – more developmental screenings, more kids receiving dental sealants, and a dramatic improvement in screenings for children in the foster care system. Much of this was simply due to having access to the system. The chilling effect of the proposed rule will immediately begin to erode these successes, especially for children.

Lasting, detrimental impact to children and families

It is estimated that Medicaid and CHIP provide health coverage to more than 132,000 Oregon children who are U.S. citizens and have at least one immigrant parent. Should their family choose to unnecessarily forego or disenroll from coverage out of fear or confusion, they would face greater economic strain and the risk of worse health outcomes. This is especially concerning for children, as health status at a young age is tied to future economic, health, and well-being outcomes. Women who are pregnant or have just given birth (and their newborns) are another incredibly vulnerable population that would be negatively and permanently affected by this rule if they choose to avoid prenatal/postnatal care due to a real or perceived barrier or restriction on services.

How this might impact Oregon Health Plan Members:

Recently, research was conducted that looked specifically at how access to prenatal care impacted immigrant women and their infants through the first year of life in Oregon. The women with access to care experienced decreased rates of inadequate prenatal care, and increased detection of key high-risk conditions like high blood pressure, diabetes in pregnancy, and a history of preterm delivery in a prior pregnancy.¹ There was also a significant decrease in infant death among the infants of the women with access to prenatal care, and their children were more likely to attend well-child visits, got more recommended screenings and vaccines, and were less likely to be born at extremely low birthweight.²

This research demonstrates that in Oregon, the proposed rule and the chilling effect could have a significant, lifelong impact on immigrant women and their infants. We do not want to go down a path that could result in worse health outcomes at an incredibly important time of need, and higher risk pregnancies and births. Furthermore, this could set up infants to potentially miss vital newborn and developmental screenings that are necessary to ensure that children are learning, growing, and meeting developmental milestones.

Worse outcomes related to the social determinants of health

Recently, the MAC has focused its attention on understanding the impact of the social determinants of health (SDOH), such as housing, food insecurity, and transportation, including understanding how the Medicaid program can positively change and improve SDOH for its recipients. The proposed rule runs counter to evidence around the impact of SDOH by including the Supplemental Nutrition Assistance Program and housing subsidies in the list of benefits that can be considered in the public charge determination. If immigrants in need don't apply for food and housing supports, this will result in worsening health outcomes and will create greater strain on the health system. These types of benefits additionally impact the entire family, putting children at risk for hunger and homelessness.

How this might impact Oregon Health Plan members:

The negative impacts on the SDOH as proposed in this rule have even been identified by your own department: the proposal may result in “increased rates of poverty and housing instability, and reduced productivity and educational attainment.”

Greater health disparities

Oregon's health system transformation has focused on improving health for all Oregonians. The social determinants of health equity are systemic or structural factors that shape the unfair distribution of the social determinants of health in communities. These structural factors are evident in social norms, policies, and political systems, both historical and current. Institutionalized racism is one example. This proposal would aggravate these inequities and lead

¹ Swartz JJ, Hainmueller J, Lawrence D, Rodriguez MI. Oregon's Expansion of Prenatal Care Improved Utilization Among Immigrant Women. *Matern Child Health J.* July 2018:1-10. doi:10.1007/s10995-018-2611-1

² Swartz JJ, Hainmueller J, Lawrence D, Rodriguez MI. Expanding Prenatal Care to Unauthorized Immigrant Women and the Effects on Infant Health. *Obstet Gynecol.* October 2017. doi:10.1097/AOG.0000000000002275

to greater health disparities as the health system grapples with the impacts of this rule on immigrants and immigrant communities.

How this might impact Oregon Health Plan Members:

Health care is important at all stages of life, but especially during pregnancy. We can't care for children without caring for their mothers. Health care during pregnancy has lifelong impacts on the health of children, and their mothers, and our community.

Denying health insurance coverage based on citizenship status contributes to a multigenerational cycle of inequity. Hispanic/Latina women on the Oregon Health Plan are already less likely to have timely prenatal care, and adolescents of color and from households speaking languages other than English are less likely to receive adolescent well care. This proposed rule and the chilling effect will worsen these disparities.³

Economic burdens

Oregon has had enormous success over the past five years in reducing costly emergency department use, predominantly by increasing access to primary and preventive care through greater health insurance coverage – all of which is at risk should the proposed rule move forward. Reversing this trend would lead to higher costs as needed care is delayed until the problem worsens, or as more intensive care than necessary is delivered. If thousands of Oregonians choose to disenroll or forego enrollment in Medicaid due to the chilling effect of this rule, hospitals and clinics will again be faced with unpredictability in costs, financial burden, and uncompensated care. Additionally, our state has estimated that if just 15% of Oregon's enrolled children with immigrant parents were to decline coverage, the state would stand to lose over \$113 million in reduced federal investment in Oregon. This proposal would strain system, especially the safety net, adversely impact health care jobs in the state, especially in rural areas, and result in significant economic loss for our state.

How this might impact Oregon Health Plan Members:

Despite expanding Medicaid in Oregon, over the past five years the state has saved an estimated \$2.2 billion in avoided costs due to innovative, better care, increased access to care, and more preventive care. Having regular, steady access to care saves money in the long run. More specifically to immigrants, it has been demonstrated that expanding postpartum care to new immigrants would promote maternal health and save millions in public funds. For every dollar spent on postpartum contraception, the state saves \$3 by averting unintended pregnancies and future obstetric costs. And perhaps most importantly, health insurance protects an individual or family from high or unexpected costs – shifting this burden to individuals and families (which will likely occur under the proposed rule) could be catastrophic to their economic viability and independence.

This proposed rule can additionally harm our state's economy by causing children to be caught in the crosshairs, resulting in individuals who grow up less healthy and more impacted by the social determinants of health. If immigrant parents choose to disenroll or forego enrollment in Medicaid, or not sign up for housing subsidies, or avoid SNAP benefits – their children also lose those supports. This could result in children that grow

³ Opportunities for Oregon's Coordinated Care Organizations to Advance Health Equity, OHA Transformation Center, June 2017.

up less healthy and less ready to learn, which over time would lead to additional economic impacts across the state.

Finally, this proposed rule undermines the MAC’s “Guiding Principles for Oregon’s Medicaid,” written in 2017 to identify core, foundational elements of Oregon Medicaid that should be protected even in the face of possible cuts or increased flexibilities for state programs:

1. Maintain Medicaid’s capacity as a critical support program for diverse subpopulations of low-income and categorically eligible Oregonians
2. Continue improving and streamlining enrollment processes and avoid barriers to enrollment
3. Continue to prioritize a patient-centered care model with a focus on all aspects of health and health determinants and primary care at its core
4. Maintain Oregon’s commitment to integrated health services
5. Engage consumers, providers, and plans in solutions
6. Continue to shift the focus upstream

While the proposed rule is intended to only impact immigrants, in reality it has the potential to negatively affect all Oregonians. For the reasons detailed above, Medicaid, the Supplemental Nutrition Assistance Program, and housing subsidies should never be considered in the definition of “public charge.” We advise you to immediately withdraw the current proposal, and instead dedicate efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants to support themselves 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.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact us to provide further information.

Sincerely,

Oregon’s Medicaid Advisory Committee

Enclosure (1)

Medicaid Advisory Committee Members

Laura Etherton, Co-Chair, Member of the General Public

Jeremiah Rigsby, Co-Chair, Director, Public Policy & Regulatory Affairs, CareOregon

Tamara Bakewell, Family Involvement Coordinator for Oregon Center for Children and Youth with Special Health Needs (OCCYSHN) (Title V)

Glendora Claybrooks NCMA, MHA, GCPM; OHP member; CAC Member, Health Share

Regina Dehen, ND, MAcOM, Chief Medical Officer and Dean of Clinics for the National University of Natural Medicine

Miguel Angel Herrada, Health Equity and Diversity Strategist, Pacific Source Health Plans

Leslee Huggins, DDS, MS, Board-certified Pediatric Dentist

Anna Lansky, MPA Assistant Director, Division of Developmental Disability Services, DHS, Ex Officio Member

Marcia Hille, Executive Director, Sequoia Mental Health Services

Maria Rodriguez, MD, MPH OB/GYN, Oregon Health and Sciences University (OHSU)

Ross Ryan, OHP member, consumer advocate

Chris Norman, Medicaid Program Director, OHA, Ex-Officio Member

Specific Comments to Proposed Rule

(g) Request for Comment Regarding the Children’s Health Insurance Program (CHIP)

We strongly recommend that CHIP not be included in the final rule. Doing so would cause lasting impact to eligible citizen low-income children and their families by potentially decreasing access to needed, critical health coverage and services. The proposed rule undermines the explicit intent of Congress to expand coverage to children and pregnant women.

(h) Request for Comment Regarding Public Benefit Receipt by Certain Alien Children

We strongly recommend against weighing past or current receipt of benefits for children in the totality of circumstances test. Doing so would decrease access to health and other social services that are necessary and critical to the health and well-being of vulnerable children. In addition, there is a lack of clarity around the expectation that “likely at any time to become a public charge” is intended to mean “likely at any time in the future to receive one or more public benefits” based on the totality of circumstances test. This is confusing and is too technical to hold children accountable for understanding in the future.

(i) Request for Comment Regarding Potential Modifications by Public Benefit Granting Agencies

The proposed rule will significantly and negatively impact immigrant children and families in Oregon as they may unnecessarily avoid seeking health coverage and needed health care, resulting in higher health care costs to providers and the state and a greater risk to the public’s health. Furthermore, the proposal undermines efforts in Oregon to move upstream to address the social determinants of health and health equity. DHS provides no justification for why changes are needed. The

Primarily for these reasons, as well as those detailed in the comments from the Oregon Health Authority (OHA) and the Department of Human Services (DHS), we urge that the rule be withdrawn in its entirety, and that longstanding principles clarified in the 1999 field guidance remain in effect.

Potential system impacts will be seen in our reporting, administration of the program, workload, call times, enrollment challenges, and material resource needs.. These costs are all at taxpayers’ expense and do not improve the quality of services, care and outcomes of the Medicaid program.