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October 22, 2021

The Honorable Alejandro Mayorkas
Secretary of the Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20429-2140

RE: Public Charge Ground of Inadmissibility, DHS Docket No. USCIS-2021-0013

Dear Mr. Secretary:

The Association of American Medical Colleges ("AAMC") welcomes the opportunity to comment on the advance notice of proposed rulemaking, Public Charge Ground of Inadmissibility, 86 *Fed. Reg.* 47025 (August 23, 2021). For the reasons discussed below **the AAMC urges the Department of Homeland Security (DHS) to make clear that the definition of "public charge" does not include the consideration of any past or current lawful use of public benefits. If a noncitizen is eligible for a public benefit, using that benefit should not be counted against them.**

The AAMC is a nonprofit association dedicated to transforming health through medical education, health care, medical research, and community collaborations. Its members are all 155 accredited U.S. and 17 accredited Canadian medical schools; approximately 400 teaching hospitals and health systems, including Department of Veterans Affairs medical centers; and more than 70 academic societies. Through these institutions and organizations, the AAMC leads and serves America's medical schools and teaching hospitals and the millions of individuals employed across academic medicine, including more than 186,000 full-time faculty members, 94,000 medical students, 145,000 resident physicians, and 60,000 graduate students and postdoctoral researchers in the biomedical sciences. Additional information about the AAMC is available at aamc.org.

Our member institutions are committed to their missions of patient care, education, research, and community engagement and often are the only providers that will treat patients without medical insurance. Patients rely on these institutions, knowing that care for an ill person is delivered regardless of their legal status in the United States and of their ability to pay. Public benefits play a critical role in providing needed support to certain noncitizens. Nationally, core health, nutrition, and housing assistance programs help nearly half of Americans make ends meet. The public charge law does not require the consideration of these benefits and they should in no way be linked to the exclusionary "public charge" provision. The fact that these benefits are legally available to certain noncitizens represents the country's policy choices about how to help as many individuals and families as possible succeed. Time and again, individuals with limited means make important contributions to the U.S. – caring for the most vulnerable, teaching our children, keeping us fed, and enriching the country. We already are aware of the chilling effect of the "public charge" rule which was significantly worsened by the previously finalized regulation.[1] As DHS considers future changes

[1] *See* Joseph Daval, "Biden's Shot At A Better Public Charge Rule," Health Affairs Blog (Sept. 29, 2021).

to the public charge regulations, **the AAMC urges the agency to ensure that the factors that can be considered in determining whether a person is likely to become a public charge are limited to what the law requires, such as health, age, income, family size, and skills.** In the immigrant community there is fear and confusion about the use of critical public benefit programs.

Public charge rules apply to immigrants seeking admission to the United States, extension of stay, change of status, or adjustment of their status to become a lawful permanent resident. This comment letter focuses on the effect and concerns of including medical and health-related public benefits in the definition of public charge on immigrants who are already in this country. Additionally, we are concerned with how an overly expansion definition could impose a barrier to individuals wishing to enter the country as graduate students, medical residents, physicians, scientists, or researchers.

Although AAMC member teaching hospitals make up only 5% of all hospitals, they provide 25% of Medicaid hospitalizations and 31% of hospital charity care. Should public charge regulations include consideration of public benefits such as Medicaid and the Children's Health Insurance Program (CHIP), immigrants are likely to be fearful to make lawful use of these programs. Teaching hospitals, in turn, expect that they will be asked to treat more and sicker patients who come to them without insurance, thereby increasing their burden and weakening the health care system and exacerbating existing health disparities.

DHS Should Narrow the Definition of "Public Charge"

DHS should define someone likely to become a public charge for inadmissibility purposes as a person who is "likely to become *primarily* and *permanently reliant* on the federal government to *avoid destitution*." This would be consistent with the congressional intent and historical understanding of public charge as applying to a narrow set of immigrants who are likely to become a "public charge" by virtue of being so in need of assistance that they were housed in almshouses and poorhouses for indefinite stays.[2], [3] It is also consistent with judicial decisions. In 2020, the Second Circuit Court of Appeals relied on the Board of Immigration Appeals' interpretation of 'public charge' to mean a person who is "unable to support herself, either through work, savings, or family ties."[4]

DHS Should Limit Public Benefits Considered as Public Charge Grounds for Inadmissibility

Using a narrow definition of public charge supports a policy that the receipt of temporary health care, nutrition, or housing assistance is **not** an indication that a person is primarily or permanently reliant on the government. Receipt of such benefits should not be considered for a public charge determination. **Specific to health care, the AAMC believes that eligible use of any type of Medicaid benefit, including CHIP, should not be considered in a public charge determination**. Medicaid may be lawfully used by certain immigrants who are in the workforce but face unexpected medical needs. The program plays an essential role in keeping working adults and their children healthy and promotes economic security. DHS should not finalize a rule that will lead immigrants and their families to forgo health care.

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[2] *See* 13 Cong. Rec. 5,109 (1882).
[3] *See also* E. P. Hutchinson, Legislative History of American Immigration Policy, 1798-1965 (Philadelphia: University of Pennsylvania Press, 1981), at 412.
[4] State of NY et. al. v. United States Dept. of Homeland Security, Nos. 19-3591, 19-3595, (2d Cir. Aug. 4, 2020) at 60.

Expansive consideration of prior use of public benefits is likely to have a significant chilling effect, not only on individuals who are entitled to Medicaid benefits, but also to those entitled to CHIP especially since distinguishing Medicaid coverage from CHIP coverage is very difficult, if not impossible, for enrollees. By Federal law, a single application is required to be used to apply for both Medicaid and CHIP. States may even refer to their CHIP financed program as Medicaid. These programs have an outsize role in covering our nation's children, however researchers have found an increase in uninsured children between 2017 and 2019 with declines in Medicaid enrollment.[5] Critically, losses in health insurance coverage during that period were experienced by US citizen children with noncitizen parents, suggesting a direct impact of the prior efforts to expand in regulation the public benefits considered for public charge inadmissibility determinations.[6]

According to the Kaiser Family Foundation, CHIP has resulted in "improvements in access and care [that] appears to lay the foundation for gains in school performance and educational attainment, which, in turn, hold promise for children's long-term health and economic well-being, and for economic productivity at the societal level."[7] In other words, the benefits of CHIP lay the foundation for self-sufficiency in the future and thus it would be counter-productive to the overall aim of the public charge provisions to consider their use. **The AAMC urges DHS to take whatever steps are necessary to limit the public benefits that will be considered as making an individual likely to become a public charge. Medicaid and CHIP should be expressly excluded as public benefits to be considered.**

DHS Should Acknowledge that International Graduate Students, Medical Residents, Physicians, Scientists, and Researchers, With Signed Employment Letters (or the Equivalent) Are Not Likely to Become Public Charges

In prior rulemaking, DHS has acknowledged that most employment-based immigrants "should have adequate income and resources to support themselves without resorting to seeking public benefits."[8] The Accreditation Council for Graduate Medical Education (ACGME) is the recognized accrediting body for medical residency programs. Among the requirements for institutional sponsors are the following: financial support for residents/fellows; health insurance benefits for residents/fellows and their eligible dependents; and disability insurance for residents/fellows.[9] According to the AAMC's Survey of Resident/Fellow Stipends and Benefits Report 2019-2020, the weighted mean stipend for post graduate year-1 (PGY-1) residents is $57,863, an increase of 3% from the prior year.[10] It seems clear that international residents and fellows will meet the standards of income and resources considered as factors for assessing likelihood of becoming a public charge.

Academic medicine is global, with training and research often occurring in multiple locations around the world. This ensures the transfer of knowledge among countries, advancement of US research goals, and support of health care advances internationally. Given the fact that scholars and scientists likely will have a significantly higher salary than learners, in addition to other benefits, DHS should

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[5] *See* Joan Alker and Alexandra Corcoran, "Children's Uninsured Rate Rises by Largest Annual Jump in More Than a Decade," Georgetown University Health Policy Institute (Oct. 2020) Available at:
[6] *See* Jennifer M. Haley et al., "Fact Sheet: Citizen Children with Noncitizen Parents Experienced Health Insurance Coverage Losses between 2016 and 2019," Urban Institute (Aug. 2021).
[7] *See* Julia Paradise, "The Impact of the Children's Health Insurance Program (CHIP): What Does the Research Tell Us?" Kaiser Family Foundation (Jul. 2014).
[8] *See* 83 *Fed. Reg.* 51123 (October 10, 2018)
[9] *See* ACGME Institutional Requirements, Accreditation Council for Graduate Medical Education (Feb. 2021).
[10] *See* AAMC Survey of Resident/Fellow Stipends and Benefits Report 2019-2020 (Nov. 2019)

be clear that an incoming international medical resident with a letter from a sponsoring institution stating that the individual will meet federal income and insurance requirements will be considered sufficient proof to be admitted to the United States without delay. These individuals are unlikely to become "public charges."

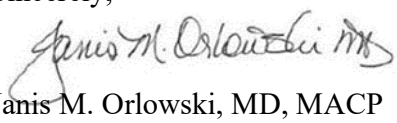
In other words, DHS should be clear that at the time of the visa application these individuals do not need to show proof of health insurance, but only a promise of insurance on enrollment or employment. To do otherwise may cause a delay in obtaining the visa which would be to the detriment of international students, residents, scholars, and researchers whose work or education calendar is tied to the academic year, generally July 1 to June 30.

Conclusion

We urge DHS to move as expeditiously as possible to issue a notice of proposed rulemaking and a Final Rule on this topic. The constantly changing public charge policies have led to confusion among many immigrants and their families, contributing to chilling effects on lawful use of public benefit programs. Publishing a fair and reasonable final rule, as we have recommended here, is the best way to limit this harm.

If you have any questions, please contact Ivy Baer of my staff, ibaer@aamc.org or 202-828-0499.

Sincerely,



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Cc: Ivy Baer, AAMC
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