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Submitted electronically via www.regulations.gov

April 25, 2022

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 notice of proposed rulemaking, Public Charge Ground of Inadmissibility, 87 *Fed. Reg.* 10570 (February 24, 2022). For the reasons discussed below **the AAMC supports the proposals by the Department of Homeland Security (DHS or the Department) to make clear that the definition of "public charge" does not include the consideration of any past or current lawful use of temporary public benefits. If a noncitizen is eligible for a temporary public benefit, using that benefit should not be counted against them.**

The AAMC (Association of American Medical Colleges) is a nonprofit association dedicated to improving the health of people everywhere through medical education, health care, medical research, and community collaborations. Its members comprise all 155 accredited U.S. and 16 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 191,000 full-time faculty members, 95,000 medical students, 149,000 resident physicians, and 60,000 graduate students and postdoctoral researchers in the biomedical sciences. In 2022, the Association of Academic Health Centers and the Association of Academic Health Centers International merged into the AAMC, broadening the AAMC's U.S. membership and expanding its reach to international academic health centers. Learn more at aamc.org.

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 expansive 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 26% of Medicaid hospitalizations and 30% 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, will end up treating more and sicker patients who come to them without insurance. Not only does this weaken the health care system it can result in worse outcomes that exacerbate existing health disparities.

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 patients 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.

We agree with the proposed rulemaking's interpretation that the public charge law does not require the consideration of these benefits and as such, 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 particularly during an unexpected health crisis. 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 in other ways as well. **The AAMC supports the agency's proposal that, in determining whether a person is likely to become a public charge, the factors considered are limited to those in statute including age, health, family status, assets, resources, financial status, education and skills.** Furthermore, we support the explicit approach for a totality of circumstances approach to making a public charge inadmissibility determination. That is, that "no one factor…should be the sole criterion" for determining if an individual is likely to become a public charge. [1]

Support for a Narrow Definition of "Public Charge"

The Department proposes to define in regulation the term "Likely at Any Time to Become a Public Charge" for inadmissibility purposes as a person who is "likely to become primarily dependent on the government for subsistence." **The AAMC supports this proposed definition, as it is consistent with the congressional intent and historical understanding of public charge.** Historically the term applied to a narrow set of immigrants who were 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]

Support for Limited Definitions of Public Benefits Considered as Public Charge Grounds for Inadmissibility

Adopting narrow definitions for the proposed terms "public cash assistance for income maintenance" and "long-term institutionalization at government expense" supports a policy that the receipt of *temporary* health care, nutrition, or housing assistance is **not** an indication that a person is primarily reliant on the Federal government. Receipt of such benefits should not be considered for a public charge determination. Specific to health care, the AAMC believes that temporary use of Medicaid and Children's Health Insurance Program (CHIP) benefits for eligible individuals should not be considered in a public charge determination. For example, Medicaid may be lawfully used by certain

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[1] 87 *Fed. Reg.* 10570 at 10669 (proposed definition of § 212.22(b) Public charge inadmissibility determination).
[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.

immigrants who are in the workforce but face unexpected medical needs, or by their children who may be American citizens and are entitled to CHIP coverage. We already have seen that the consideration of such benefits in public charge determinations has a chilling effect on immigrant communities, worsening their health and their standard of living. CHIP has 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] DHS should ensure that it's rule will not lead immigrants and their families to forgo any temporary benefits to which they are legally entitled.

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] The lawful use of benefits supported by CHIP establishes a base for self-sufficiency in the future. It would be counter-productive to the overall aim of the public charge provisions to consider their use as evidence that an individual may become a public charge. **The AAMC supports the Department's proposal to limit the public benefits that will be considered as making an individual likely to become a public charge.**

The Department 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 was $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. **The Department should be clear that incoming international graduate students, medical residents, physicians, scientists, and researchers, with a letter from a sponsoring institution stating that the individual will meet**

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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)

federal income (or financial support) and insurance requirements, has sufficient proof to be admitted to the United States without delay under the proposed totality of circumstances[11] review when making inadmissibility determinations. These individuals likely will have sufficient income or financial support, in addition to other benefits, and thus are unlikely to become "public charges."

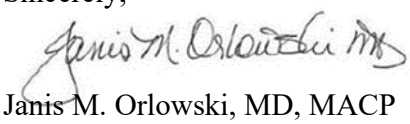
In other words, DHS should be clear that at the time of the visa application these individuals do not need to show proof of health insurance, but only a promise of insurance on enrollment or employment. To do otherwise may cause a delay in obtaining the visa which would be to the detriment of international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

Conclusion

We thank the Department for moving expeditiously since last fall's advance notice of proposed rulemaking to issue this notice of proposed rulemaking. The fluctuation of public charge policies has 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,



Janis M. Orlowski, MD, MACP
Chief Health Care Officer

Cc: Ivy Baer, AAMC
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[11] *See supra*, 1